

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

**BRIEF AND APPENDIX
FOR APPELLANT**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

No. 8319

FILED NOV 20 1942

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ANNIE WEEKS, *Appellant,*

v.

RUDOLPH B. BEHREND & RUDOLPH B. BEHREND,
t/a NACHMAN FURNITURE COMPANY, A COR-
PORATION

and

AETNA CASUALTY AND SURETY COMPANY, A
CORPORATION, *Appellees.*

Appeal from the District Court of the United States
for the District of Columbia.

EMMETT L. SHEEHAN,
223 Bond Bldg.,
Attorney for Appellant.



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ANNIE WEEKS, *Appellant*,

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and

AETNA CASUALTY AND SURETY COMPANY,
A CORPORATION, *Appellees*.

Appeal from the District Court of the United States for the
District of Columbia.

BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT.

This case is an appeal from a final decision and order of the District Court of the United States for the District of Columbia. In such cases appellate jurisdiction is vested in this Court by Act of March 3, 1891, C. 517, Sec. 6 (26 St. 828) and amendments, U. S. C. Title 28, Sec. 225.

The suit in the District Court was for an injunction restraining a compensation award of the Deputy Commis-

sioner of the U. S. Employees' Compensation Commission and was filed by authority of Act of March 4, 1927, C. 509, Sec. 21 (44 Stat. 1436) and amendments, U. S. C. Title 33, Sec. 921.

STATEMENT OF THE CASE.

On June 20th, 1938, Maurice G. Weeks, employed by Rudolph B. Behrend and Rudolph B. Behrend, t/a Nachman Furniture Company at 801 E St., N. W., Washington, D. C., and in the course of his employment sustained fatal injuries from which he died on June 23, 1938.

Thereafter a claim for death benefits under section 9 (a) and (b) of the District of Columbia Workmen's Compensation Act (U. S. C. title 33, Sec. 901-950) which was made applicable to workmen in the District of Columbia by Act of Congress approved May 17, 1928, 45 Stat. 600, ch. 612, Sec. 1, this claim being made by Annie Weeks, surviving wife of deceased employee, which claim was controverted by the employer and insurance carrier, the appellees herein.

After a hearing pursuant to law, Deputy Commissioner Frank A. Cardillo, by order of April 19th, 1939, awarded death benefits to Annie Weeks, the widow (R. 10, 11, 12; App. 9, 10, 11) and these were paid until April 1, 1942. (R. 35; App. 26-27).

A Bill of Complaint for Injunction was filed May 18, 1939 (R. 1; App. 2) in which the employer and insurance carrier sought a setting aside of the award and an injunction, and after petition duly filed (R. 16; App. 14) by Annie Weeks, widow, she was granted leave to intervene as a party defendant (R. 18; App. 15).

A Motion to Dismiss was filed on behalf of the Deputy Commissioner defendant (R. 13; App. 12), a stipulation filed (R. 15; App. 13) whereby it was agreed that all testimony, briefs, and exhibits before the Deputy Commissioner should be considered by the Court in disposing of the motion to dismiss, and these were so filed (R. 47-166), and the Motion to Dismiss was joined in by Annie Weeks, Intervening Defendant (R. 19-20; App. 16-17).

The Motion to Dismiss was overruled by Order of Justice Bailey filed July 27, 1939 (R. 21; App. 17).

Thereafter Answers were duly filed by both the Defendant Cardillo (R. 22, 23, 24; App. 18-19-20) and the Defendant Weeks (R. 26, 27, 28; App. 20, 21, 22), and Motions for Summary Judgment were filed by the Defendant Cardillo on Jan. 24, 1942 (R. 30; App. 23) and by the Plaintiffs on Jan. 27, 1942 (R. 32; App. 24).

After hearing on the Motions for Summary Judgment, participated in by both Counsel for Defendant Cardillo and Counsel for Defendant Weeks (R. 35-36; App. 26-27) in connection with Defendant Cardillo's motion (because the interests of the defendants were the same), and likewise participated in by Counsel for Plaintiffs, the court, again acting through Mr. Justice Bailey entered Findings of Facts (R. 33, 34; App. 25, 26) and Conclusions of Law, and Entered an Order for Summary Judgment and Granting Permanent Injunction (R. 35; App. 26) as prayed for by plaintiffs, thus setting aside and annulling the Award to Annie Weeks, widow, as made by the Deputy Commissioner (R. 10, 11, 12; App. 9, 10, 11).

The case comes to this court on an Appeal by the Defendant Weeks, the beneficiary of death benefits under the award of the Deputy Commissioner which has been set aside by the court as aforesaid.

STATUTES INVOLVED.

Act of March 4, 1927, Title 33, Sec. 902 (16) (44 Stat. 1424) reading as follows:

“(16) The term ‘widow’ includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time.”

Annie Weeks was held to be the widow and entitled to benefits of the death award provided for by Sec. 9 (a) and (b), of U. S. Code Title 33, Sec. 909 (a) and (b), (44 Stat. 1424).

STATEMENT OF POINTS.

(R. 40, 41)

1. The Court erred in failing to sustain the Motion to Dismiss the Bill of Complaint, and in overruling the Motion to Dismiss the Bill of Complaint filed herein.

2. The Court erred in holding that the Compensation Order of April 19th, 1939, was "not in accordance with law."

3. The Court erred in holding that neither the defendant Cardillo, nor the defendant Weeks were entitled as a matter of law, on the record, to have the Court enter judgment setting aside the Compensation Order of April 19th, 1939, and remanding the case to the Deputy Commissioner with instructions to make any further or different findings of fact, or to correct any mistake of omission or commission, or to issue any new or different Compensation Order whatsoever.

4. The court erred in holding that the plaintiffs were entitled as a matter of law, on the record, to have judgment setting aside the Compensation Order of April 19th, 1939, and restraining permanently the enforcement of said order in whole or in part.

5. The court erred in granting plaintiffs motion for summary judgment and in granting a permanent injunction and in wholly suspending and setting aside the Compensation Order, Award of Death Benefits, dated April 19th, 1939.

6. The court erred in failing to grant the Motion for Summary Judgment of the defendant Cardillo, and in failing to enter judgment remanding the case to the Deputy Commissioner with instructions to make any further or different findings of fact, or to correct any mistake of omission or commission, or to issue any new or different Compensation Order whatsoever.

SUMMARY OF ARGUMENT.

The motion to dismiss should have been granted. By numerous court decisions, there was substantial evidence to sustain the award.

The contention of the plaintiffs that Annie Weeks was not the lawful wife of the deceased, and therefore could not be his lawful widow was wholly without merit.

Numerous authorities exist for the remanding of such a case as this for the purpose of correcting any mistake or omission or commission, and for the issuance of a new or different order.

To allow the award of the Deputy Commissioner to be set aside is to wholly defeat the purposes of the Workmen's Compensation Act.

ARGUMENT.

1. There is substantial evidence to support the finding of Deputy Commissioner Cardillo, and the Motion to Dismiss the Bill of Complaint should have been granted.

(a) As to Annie Weeks being the lawful wife of Maurice Weeks at the time of his death, the Deputy Commissioner's decision is absolutely correct on basis of fact, and on basis of law. The briefs and authorities cited therein (R. 154 to 165 inclusive) represent the views of counsel for Annie Weeks, and counsel for plaintiffs, and it is submitted that on the authorities submitted by counsel for Annie Weeks, as well as the case of Thomas vs. Murphy decided by this court Oct. 9, 1939, 71 App. D. C. 69, 107 F. 2d 268, the Deputy Commissioner's finding as to her being the lawful wife is absolutely correct. Furthermore the United States District Court, certainly by implication, has held the marriage to be valid and the status of Annie Weeks as wife as correct, by failing to give any consideration to the contention of plaintiffs that the marriage between Annie Weeks and Maurice Weeks was invalid, and by vacating the award of death benefits on entirely different grounds.

(b) It is submitted that there is substantial evidence to sustain the finding of the Deputy Commissioner (R. 11; App. 10).

“that at the time of the death of the employee Annie Weeks was living apart from him for justifiable cause.”

“Living apart for justifiable cause” as the term is used in the Workmen’s Compensation Act which is applicable to the District of Columbia by Act of March 4, 1927, Title 33, Sec. 902 (16) hereinbefore quoted certainly means a “living apart” and the existence of a “justifiable cause” for so living apart.

By reason of the stipulation (R. 15, App. 13) placing all testimony, exhibits, and briefs before the court for purpose of considering the motion to dismiss, it is felt that the Court erred in failing to sustain the Motion to Dismiss. A time table of relevant events should be helpful as showing the salient points in the case, as follows:

August 8, 1934, Maurice Weeks, employee, and Annie Weeks were married at Alexandria, Va. (R. 60, R. 151) and immediately returned to H St. address of Mrs. Weeks. Shortly thereafter (R. 98) parties moved to 511 A St., S. E. (R. 70, app. 37).

Spring 1936, Mr. Weeks secured work at Greenbelt, Md., on government project (R. 70, app. 37) but was injured soon thereafter and his wife understood (R. 71, App. 37) that he was allowed compensation for this injury, and that he drew such compensation up to the time of his death (R. 87, App. 39, R. 95, App. 40).

While living on H Street, and also while living at 511 A St., S. E., and up to the time of his death, Maurice Weeks was on friendly terms with his wife and helped her run the places where she lived (R. 61; App. 33; R. 66, App. 35; R. 71, App. 37-38; R. 75-76) particularly when she was sick and her health impaired.

1936—(R. 63, App. 34) Maurice Weeks moved uptown so as to get odd jobs, and be near contacts where he could get such work as he was then able to do after his injury (R. 64, 65).

June 20, 1938, Maurice Weeks was fatally injured and died June 23, 1938.

All the while Maurice Weeks and Annie Weeks were living together as man and wife (R. 81) in a technical, legal, sense, and each helped the other because sickness and injury suffered by both parties made this the humane and proper thing to do (R. 105, App. 41, R. 106, App. 38).

It is felt that the "justifiable cause" for the parties living apart, and yet retaining constant touch with each other in the stringent economic condition in which they were unfortunately forced by reason of the sickness of Mrs. Weeks, and the injury and disability of Mr. Weeks, is "justifiable cause" for their living apart within the meaning of the Workmen's Compensation Act.

If there is any doubt as to whether or not the parties were "living apart for justifiable cause" as the Deputy Commissioner has found (R. 11, App. 10), the doubt should certainly, as a matter of law, be resolved in favor of the claimant and widow, Annie Weeks under the authority of *Hartford Accident & Indemnity Co. v. Cardillo, et al.*, decided March 11, 1940, 72 App. D. C. 52; 112 F. 2d 11, and the cases therein cited which hold that "where there is doubt, it should be resolved in favor of the injured employee or his dependent family." Certainly the widow is entitled to have the benefit of any doubt, if doubt there be, as to the meaning of the words "justifiable cause" as used in this Workmen's Compensation Act. Bearing in mind the purposes of the Act is to compensate for injury or death arising out of or in the course of employment, and the facts of this case which show the living apart was clearly on account of stringent economic circumstances, this certainly would justify the finding of the Deputy Commissioner that the widow is entitled to the death benefit award given her by him.

The Compensation Order of April 19th, 1939, is in accordance with law, and the court erred in holding that it was "not in accordance with law." The Court in its findings of fact stated (R. 34, App. 25).

4. "There is no substantial and competent evidence to sustain the findings of fact 'that at the time of the death of the employee, Annie Weeks was living apart from him for justifiable cause' as the phrase 'living apart for justifiable cause' is used in the Compensation Act"

and gave this finding as the reasons for holding the Compensation Order was "not in accordance with law."

It is felt that no narrow, technical, restricted meaning should be attached to the phrase "living apart for justifiable cause." This phrase in the law, should be held to mean any "justifiable cause" which appeals to the humane and just instincts of man. It is contended that *Hartford, etc. v. Cardillo, supra*, and the cases therein cited, would seem to require that such a construction be placed on this language in the law. It is most earnestly urged for this reason that the lower court erred in its construction of the meaning of the quoted clause above, and that this court should correct the lower court's error in this regard. The facts in the record as a whole certainly justify this action by this court.

2. If the Motion to Dismiss the Bill of Complaint should not have been granted, then, after answers were filed by both defendants, the Motion for Summary Judgment by ~~Plaintiffs~~ should have been granted.

DEFENDANTS

The answer filed herein by the Defendant Cardillo, (R. 22, 23, 24; App. 18, 19) and the answer of the Defendant Weeks (R. 26, 27, 28; App. 20, 21, 22) asked the Court to remand the case to the Deputy Commissioner, in order to make such further findings of fact relative to the status of the defendant Annie Weeks as the evidence may warrant, set aside the said compensation order of April 19, 1939, and make such order as may be proper in the premise.

The answers were thus drawn because it was felt that if the finding of the Deputy Commissioner was technically incorrect in respect to the parties living apart for justifiable cause, because of some narrow technical meaning that "jus-

tifiable cause" might be given, his factual findings as embodied in his order indicated that to all intents and purposes, in technical legal status, the parties could be held to be living together as man and wife, that after securing additional testimony and evidence, as he deemed proper, or after further consideration of the record, the Deputy Commissioner might see fit to so draw his order, and that if so drawn it would seem to be strictly in accordance with law in every technical sense. There is an overwhelming amount of legal authority to support a remanding of this case in these circumstances and it is felt that the following legal authorities are among the best and most recent to support the proposition of the court's authority and duty to remand under these circumstances: *National Labor Relations Board v. Virginia Electric Power Co.*, 62 S. Ct. 344, decided by the Supreme Court of the United States, Dec. 22, 1941; *Ford v. National Labor Relations Board*, 305 U. S. 364; *Howard v. Monahan, Deputy Commissioner*, 33 F. 2d, 151; *Hennessy v. Amalgamated Slate Co.*, 228 App. Div. 858 (N. Y.); *Machels v. State Commission*, 151 S. E. 313; *Gauthier v. Penobscot Chemical Co.*, 113 Atl. 228, 71 C. J. 1398.

Concerning the right and propriety of a remand such as was prayed for in the answers in this case, and in defendant's motion for summary judgment, the Supreme Court, in *Ford Motor Co. v. National Labor Relations Board*, 305 U. S. 364; 59 S. Ct. 301, 83 L. Ed. 221, pointed out (quoting from p. 308 of 59 St. Ct.):

"There is nothing in the statute, or in the principles governing judicial review of administrative action, which precludes the court from giving an administrative body an opportunity to meet objections to its orders by correcting irregularities in procedure, or supplying deficiencies in its record, or making additional findings where they are necessary, or supplying findings validly made in the place of those attacked as invalid. The application for remand in this instance was not on frivolous grounds or for any purpose that might be considered dilatory or vexatious. Petitioner had raised a serious question as to the validity of the find-

ings and order. The Board properly recognized the gravity of the contention and sought to meet it by voluntarily doing what the court could have compelled. That was in the interest of a prompt disposition, and whatever delay has resulted is due to petitioner's resistance to that course." * * *

(Quoting from p. 307 of 59 St. Ct.):

"Such a remand does not dismiss or terminate the administrative proceeding. If findings are lacking which may properly be made upon the evidence already, the court does not require the evidence to be reheard. * * * Whatever findings or order may subsequently be made will be subject to challenge if not adequately supported or the Board has failed to act in accordance with the statutory requirements."

Certainly, under this authority, a remanding such as prayed for by the defendants was proper in this case.

It is further pointed out that under Section 22 of the Workmen's Compensation Act as applicable to the District of Columbia, (Act of Mar. 4, 1927, c. 509 § 22, 44 Stat. 1437; May 26, 1934, c. 354, § 5, 48 Stat. 807) supra, it would be entirely proper for such an order as the present one to be modified or corrected because of a mistake in a determination of fact by the Deputy Commissioner. This section reads:

"Sec. 22. Upon his own initiative, or upon the application of any party in interest, or on the ground of a change in condition, or because of a mistake in the determination of fact by the deputy commissioner, the deputy commissioner, may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued * * * review a compensation case in accordance with the procedure prescribed in respect of claims in Section 19, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation." * * *

Since no restraining of payments under the order of April 19th, 1939, was had until the Court Order of April 1, 1942 (now appealed from) was entered, it would seem that the above provision from the Workmen's Compensation Law in and of itself was sufficient to warrant the Court in remanding the case as prayed for in the answers and as requested in defendant's motion for summary judgment.

Under any condition, it would seem that a remanding is proper and in accordance with law because such remanding will in no way prejudice the rights of the plaintiffs in this case.

IN CONCLUSION.

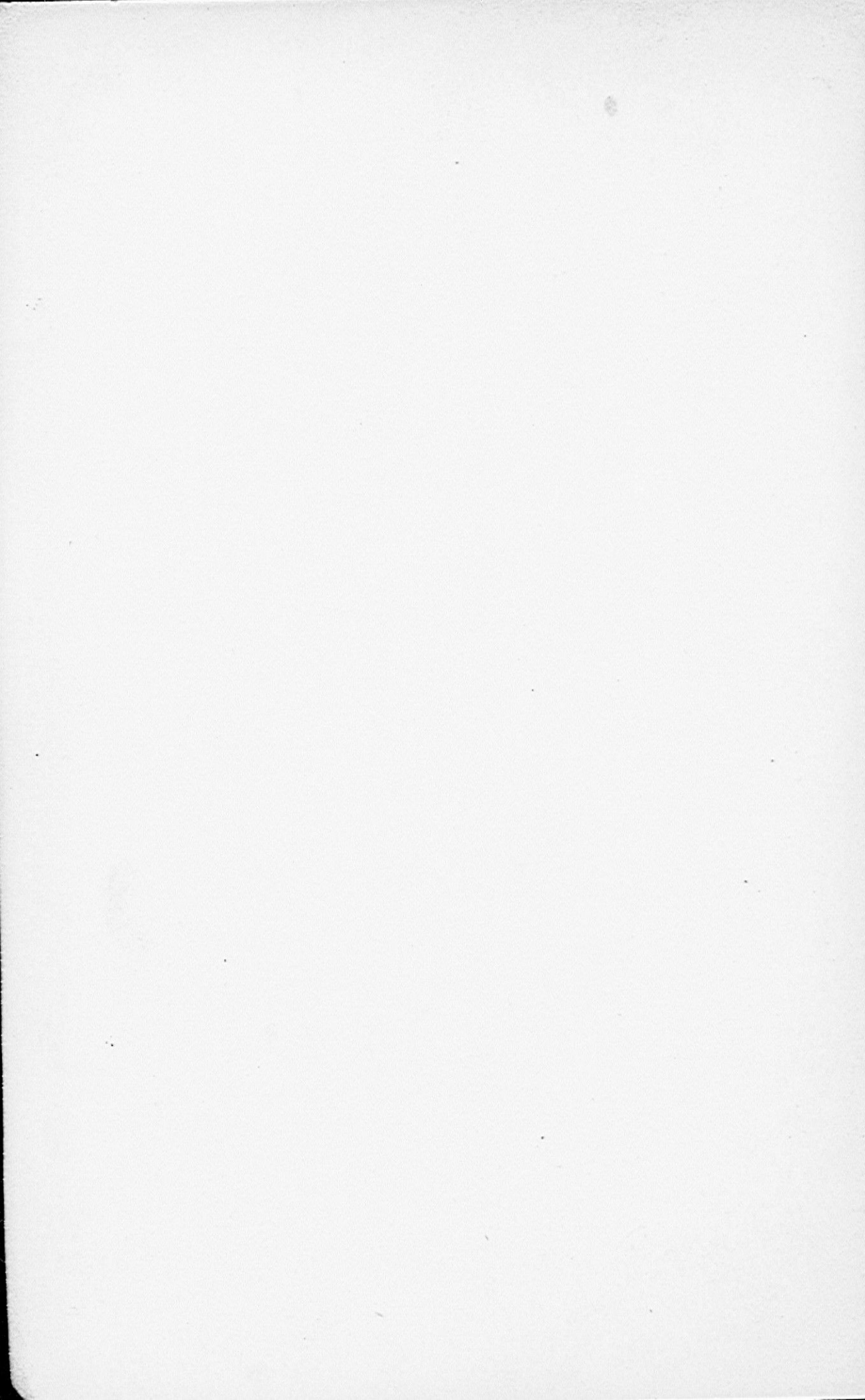
I. It is respectfully submitted that under the construction of the meaning of the words "justifiable cause" as used in the statute, which is contended for, and which it is felt is reasonable, humane, and just, this court should reverse the lower court and hold that the Motion to Dismiss should have been granted and require that the award of the Deputy Commissioner be reinstated and sustained in every respect.

II. That if this court feels that it can not properly place the meaning on the words "justifiable cause" contended for by this appellant, Annie Weeks, widow of Maurice Weeks, that it should properly reverse the lower court by ordering it to remand the case to the Deputy Commissioner as prayed for in the answers of the defendants, and the motion for summary judgment of the defendant Cardillo, joined in by the defendant Weeks at the final hearing.

All of which is respectfully submitted for the consideration of the court by

EMMETT LEO SHEEHAN,
223 Bond Building,
Washington, D. C.
Attorney for Appellant.

APPENDIX



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AETNA CASUALTY AND SURETY COMPANY, A
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Appeal from the District Court of the United States
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APPENDIX TO BRIEF FOR APPELLANT.

I.

**Pleadings, Docket Entries, and Other Papers Designated
By Appellant.**

1 In the District Court of the United States
For the District of Columbia

Civil Action 2791.

Filed 5/18/39

RUDOLPH B. BEHREND & RUDOLPH B. BEHREND, t/a Nachman
Furniture Company, a corporation, 1317 F Street,
N. W., Washington, D. C., and

AETNA CASUALTY AND SURETY COMPANY, a corporation, In-
vestment Building, Washington, D. C., *Plaintiffs,*

v.

FRANK A. CARDILLO, Deputy Commissioner, District of Co-
lumbia District U. S. Employees' Compensation Com-
mission, McGill Building, 908 G Street, N. W., Wash-
ington, D. C., *Defendant.*

*Bill of Complaint for Injunction and Other Relief
Under Compensation Statute.*

The plaintiffs, Rudolph B. Behrend & Rudolph B. Behrend, t/a Nachman Furniture Company, a District of Columbia Corporation, and the Aetna Casualty and Surety Company, a corporation, by their bill of complaint filed herein respectfully represents to this Honorable Court as follows:

1. That plaintiff Rudolph B. Behrend, a citizen of the United States and a resident of the District of Columbia, and trading as the Nachman Furniture Company, was on June 20th, 1938 engaged in having a brick wall erected in an elevator pit at 801 E Street, N. W., and brings this suit in his own right, and in the name of the Nachman Furniture Company, as an employer in the District of Columbia.

2 2. That plaintiff Aetna Casualty and Surety Com-
pany is a corporation, organized and existing under
and by virtue of the Laws of Connecticut, is doing
business in the District of Columbia and files this suit in its
own right as insurance carrier for Rudolph B. Behrend &
Rudolph B. Behrend t/a Nachman Furniture Company.

3. That the defendant Frank A. Cardillo is a citizen of
the United States and a resident of the District of Colum-
bia, and is sued in his official capacity as Deputy Commis-
sioner, U. S. Employees' Compensation Commission for the
District of Columbia.

4. That in accordance with the providence of an Act of
Congress approved March 4, 1927 (44 Stat. L. 1424) which
is known as the Longshoremen's and Harbor Workers'
Compensation Act, made applicable to certain employments
in the District of Columbia by Act of Congress approved
May 17th, 1928 (45 Stat. L. 600), plaintiff insurance carrier
had issued to Rudolph B. Behrend & Rudolph B. Behrend
t/a Nachman Furniture Company, a certain policy of in-
surance securing the payment of compensation and medical
benefits in case of injury or death to the employees of said
Rudolph B. Behrend & Rudolph B. Behrend t/a Nachman
Furniture Company arising out of and in the course of their
employment.

5. That on the 20th day of June, 1938 one Maurice G.
Weeks was employed by said Rudolph B. Behrend & Ru-
dolph B. Behrend, t/a Nachman Furniture Company at 801
E Street, N. W.; that on said date while engaged in his
duties as aforesaid employee sustained severe personal in-
juries as the result of being crushed by an elevator
3 counterweight and from which injuries said employee
died on June 23rd, 1938.

6. That thereafter a claim for death benefits under sec-
tion 9 (a) and (b) of the District of Columbia Workmen's
Compensation Act was filed by Annie Weeks, who claimed
to be the surviving wife of the deceased employee, and which
claim was controverted by the employer and insurance car-

rier on the grounds that the marriage between Maurice G. Weeks and Annie Weeks was not a valid marriage ceremony, for the reason that at the time they went through said marriage ceremony in Alexandria, Virginia, they were both residents of the District of Columbia, and Maurice G. Weeks had been divorced by a previous wife on account of his adultery in the District of Columbia and that under the District Code he could not legally re-marry while a resident of the District of Columbia, and further that the alleged widow was not dependent for support on the deceased at the time of his death, nor was she separated from him on account of justifiable cause. The term "widow" under the provisions of section 2 of the District of Columbia Workmen's Compensation Act, Paragraph 16, includes only the decedent's wife living with or dependent for support upon him at the time of his death, or living apart for justifiable cause, or by reason of his desertion at such time.

7. That the defendant Deputy Commissioner thereupon ordered a formal hearing on said claim on February 21st, 1939. At this hearing plaintiffs again raised the defenses set forth in paragraph 6 above, and briefs having been submitted by the attorneys in the case it was stipulated

4 that at said hearing that the briefs be made a part of the record.

8. That following said hearing defendant deputy commissioner issued a compensation order on April 19th, 1939, in which he found as a matter of fact that:

"* * * that a claim for death benefits was filed by Annie Weeks as surviving wife of the deceased employee; that prior to his marriage to Annie Weeks, the employee had been married four times; that his first two wives had died before he married the third, Emma Bailey Weeks; that on December 16, 1913, the said Emma Bailey Weeks obtained a divorce from him in the District of Columbia on the ground of adultery; that on November 3, 1931 he married his fourth wife,

Lillian A. Herbert, in Alexandria, Virginia; that the said Lillian A. Herbert (Weeks) subsequently died on May 21, 1933; that on August 8, 1934, the employee married the claimant, Annie Weeks; that the marriage took place in Alexandria, Virginia; that at the time of the last marriage the claimant knew of the death of the former wife; but she was not aware that the employee had been divorced in the District of Columbia in 1913; that at the time of the last marriage to Annie Weeks, both parties to the marriage resided in the District of Columbia; that following the said marriage, the employee and Mrs. Weeks lived together in the District of Columbia at 507 H Street, Northwest, where the latter operated a rooming house; that approximately 16 months following the said marriage the employee left his wife and moved downtown; that the reason for the separation was his desire to obtain employment from the Public Relief Bureau, and his belief that he would not be eligible for such employment if living with his wife who conducted a rooming house; that relief was granted him as well as occasional employment; that the employee remained on friendly terms with his wife and that they met frequently up to the date of his death; that the employee contributed to his wife's support whenever he was able to and in such amounts as he was able to afford; that at the time of the death of the employee Annie Weeks was living apart from him for justifiable cause; that the said Annie Weeks, who was born on November 5, 1888, was the legal wife of the employee at the time of his death and she is entitled to death benefits as his surviving wife at the rate of \$10.10 per week (35% of \$28.85) beginning June 23, 1938; that the accrued compensation for death to April 12th, 1939, inclusive, is \$424.20, of which amount nothing has been paid to the claimant; that the burial expenses of the deceased amounted to \$200.00, which amount has been paid by the insurance carrier * * *

An award was then made to Annie Weeks at the rate of \$10.10 per week for the period of 42 weeks from June 23, 1938 to April 12th, 1939, or an accrual of \$424.20, and thereafter to be continued at the same weekly rate subject to the limitations of the Law or until otherwise ordered. An award of a legal fee of \$150.00 was also made to Attorney Emmett Leo Sheehan which was to be paid out of the accrued compensation. Copy of said compensation order is hereto attached and marked plaintiff's "Exhibit A" and prayed to be read as part hereof.

That said compensation order filed April 19th, 1939 is "not in accordance with law" for the following reasons:

(1) The findings of the Deputy Commissioner that at the time of the death of Maurice G. Weeks the claimant, Annie Weeks, was living apart from him for justifiable cause, is contrary to the evidence admitted in the record before him at the hearing on February 21st, 1939.

(2) The finding of the Deputy Commissioner that the said Annie Weeks, who was born on November 5th, 1888, was the legal wife of the employee at the time of his death is not supported by the law and the evidence produced at the hearing before the Deputy Commissioner.

(3) There is no substantial and competent evidence to sustain the aforesaid findings of fact. The record clearly shows that the deceased employee was not living separate and apart from his wife for justifiable cause as that
6 term is used in the Compensation Act. According to the testimony of Annie Weeks he was living separate and apart from her so that he could obtain relief payments from the Public Assistance Division of the Board of Public Welfare for the District of Columbia, notwithstanding these payments extended over a period of several years. That the reasons given by the Deputy Commissioner in his findings of fact as to what he considered a separation for justifiable cause is not supported by the testimony in the case, nor are the findings of fact justified by the evidence.

The action of the Deputy Commissioner is arbitrary, capricious, and predicated upon conjecture and sympathy, and is therefore without basis of fact or law. His compensation order is therefore not in accordance with law.

WHEREFORE, the premises considered, plaintiffs pray:

1. That an United States writ of subpoena be issued by this Honorable Court against said defendant, Frank A. Cardillo, deputy commissioner, requiring him by a day certain to be therein named, to appear herein and answer the exigencies of this bill of complaint.

2. That said defendant deputy commissioner be directed and required to file in this case the transcript of testimony adduced before him on February 21st, 1939, together with briefs filed by counsel in the case regarding the validity of the fifth marriage between Maurice G. Weeks and Annie Weeks, together with all exhibits from the evidence
7 before the Deputy Commissioner at the hearing.

3. That an injunction issue, pendente lite and permanently, restraining the enforcement of said compensation order and award in whole or in part, and requiring the defendant to vacate and set aside the same.

4. That the plaintiffs may have such other and further relief as the nature of the case may require and to the Court may seem proper.

RUDOLPH B. BEHREND & RUDOLPH B. BEHREND, tr/as NACHMAN FURNITURE COMPANY, a Corporation, and AETNA CASUALTY AND SURETY COMPANY, a corporation.

By: JAMES E. McCABE,

Their representative and agent.

JAMES E. McCABE,

Transportation Building,
Washington, D. C.
Attorney for Plaintiffs.

District of Columbia, ss:

JAMES E. McCABE, being first duly sworn according to law on oath deposes and says that he is the attorney for Rudolph B. Behrend & Rudolph B. Behrend, tr/as Nachman Furniture Company, a corporation, and the Aetna Casualty & Surety Company, a corporation, in the above entitled compensation matter and is duly authorized by them to make this acknowledgement; that he has read the foregoing bill of complaint by him subscribed and knows the contents thereof; that the facts and matters therein stated of his own knowledge are true and those stated upon information and belief he believes to be true.

JAMES E. McCABE.

8 SUBSCRIBED and sworn to before me this 18th day of May, 1939.

(Seal)

LOUISE J. FITZGERALD,
Notary Public.

(Copy of findings of fact and award in full attached and marked Plaintiffs' "Exhibit A")

9 *Plaintiffs' "Exhibit A"*

United States Employees Compensation Commission
District of Columbia Compensation District
In the Matter of the Claim for Compensation Under the
District of Columbia Workmens' Compensation Act.
(Maurice G. Weeks, deceased) ANNIE WEEKS, *Claimant*,
v.

RUDOLPH B. BEHREND & RUDOLPH B. BEHREND tr/as NACH-
MAN FURNITURE COMPANY, *Employer*,
AETNA CASUALTY AND SURETY COMPANY, *Insurance Carrier*.

Compensation Order
Award of Death Benefits
Case No. 1720-15 Fatal

Such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing

having been duly held in conformity with law, the Deputy Commissioner makes the following

Findings of Fact

That on the 20th day of June, 1938, the deceased above named, hereinafter referred to as employee, was in the employ of the employer above named, whose address is 1317 F Street, Northwest, Washington, District of Columbia; that the employer was subject to the provisions of an Act of Congress approved May 17, 1928, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes"; that the liability of the employer for compensation under the said Act was insured by the Aetna Casualty and Surety Company; that on the said day the employee herein, while performing service as a bricklayer for the employer and engaged in erecting a brick wall in an elevator pit at 801 E Street, Northwest,

10 sustained personal injury when the elevator counterweight descended, striking him and inflicting multiple injuries consisting of a crushed chest, fractured ribs, hemorrhage of the pleura, compound fracture of the left tibia and fibula, and fracture of the third and fourth lumbar vertebrae; that on June 23, 1938, the employee died from pneumonia of the pulmonary emboli; that the death resulted from the injury sustained; that written notice of death was not given within thirty days, but that the employer had knowledge of the death and has not been prejudiced by the lack of such written notice; that the average annual earnings of the employee herein at the time of his injury amounted to the sum of \$1500.00; that the employer furnished the employee with medical treatment, etc. in accordance with the provisions of section 7 (a) of the said Act; that a claim for death benefits was filed by Annie Weeks, as surviving wife of the deceased employee; that prior to this marriage to Annie Weeks, the employee had been married four times; that his first two wives had died

before he married the third, Emma Bailey Weeks; that on December 16, 1913, the said Emma Bailey Weeks obtained a divorce from him in the District of Columbia on the ground of adultery; that on November 3, 1931, he married his fourth wife, Lillian A. Herbert, in Alexandria, Virginia; that the said Lillian A. Herbert (Weeks) subsequently died on May 21, 1933; that on August 8, 1934, the employee married the claimant Annie Weeks; that the marriage took place in Alexandria, Virginia; that at the time of the last marriage the claimant knew of the death of the former wife, but she was not aware the employee had been divorced in the District of Columbia in 1913; that at the time of
11 last marriage to Annie Weeks, both parties to the marriage resided in the District of Columbia; that following the said marriage, the employee and Mrs. Weeks lived together in the District of Columbia at 507 H Street, Northwest, where the latter operated a rooming house; that approximately 16 months following the said marriage the employee left his wife and moved downtown; that the reason for the separation was his desire to obtain employment from the Public Relief Bureau, and his belief that he would not be eligible for such employment if living with his wife who conducted a rooming house; that relief was granted him as well as occasional employment; that the employee remained on friendly terms with his wife, and that they met frequently up to the date of his death; that the employee contributed to his wife's support whenever he was able to and in such amounts as he was able to afford; that at the time of the death of the employee Annie Weeks was living apart from him for justifiable cause; that the said Annie Weeks, who was born on November 5, 1888, was the legal wife of the employee at the time of his death and she is entitled to death benefits as his surviving wife at the rate of \$10.10 per week (35 per cent of \$28.85) beginning June 23, 1938; that the accrued compensation for death to April 12, 1939, inclusive is \$424.20, of which amount nothing has been paid to the claimant; that the burial expenses of the de-

ceased amounted to \$200.00, which amount has been paid by the insurance carrier.

Upon the foregoing findings of fact, the deputy commissioner makes the following

12

Award

That the employer, Rudolph B. Behrend, and Rudolph B. Behrend trading as Nachman Furniture Company, and the insurance carrier, Aetna Casualty and Surety Company, shall pay to the claimant death benefits as follows: 42 weeks at \$10.00 per week, from June 23, 1938, to April 12, 1939, inclusive, in the amount of \$424.20; and shall continue payments thereafter in bi-weekly installments at the rate of \$10.10 per week subject to the limitations of the law or until otherwise ordered.

A fee for legal services rendered the claimant in connection with this claim is approved in the amount of \$150.00 in favor of attorney Emmett Leo Sheehan, same to constitute a lien upon and be deducted from this award.

Given under my hand at Washington, D. C., this nineteenth day of April, 1939.

(Signed) FRANK A. CARDILLO

Deputy Commissioner

District of Columbia Compensation District

Proof of Service

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, employer, insurance carrier, attorney for the claimant and attorney for the respondent at the last known address of each as follows:

Mrs. Annie Weeks 511 A Street, S. E. Wash. D. C.

Rudolph Behrend, & Rudolph B.

Behrend tr/as Nachman Furniture Company 1317 F St.
N. W. Wash. D. C.

Aetna Casualty & Surety Company Investment Building

Mr. Emmett Leo Sheehan Bond Building

Mr. James E. McCabe Transportation Bldg. Washington,
D. C.

Mailed April 19, 1939 (Signed) FRANK A. CARDILLO
Deputy Commissioner

13 *Motion to Dismiss Bill of Complaint*

Filed June 7, 1939

Now comes the defendant, Frank A. Cardillo, deputy commissioner, United States Employees' Compensation Commission, by his attorneys, and moves this Honorable Court to dismiss the bill of complaint filed herein for the following reasons:

1. That the bill of complaint filed herein does not state a cause of action and does not entitle plaintiffs to any relief in law or equity; nor does said bill state a claim against defendant upon which relief can be granted.

2. That the bill of complaint with exhibits, including the transcript of the testimony made a part of the bill by stipulation, shows that the findings of fact and award of the deputy commissioner as contained in the compensation order filed April 19, 1939, in favor of Annie Weeks, complained of in the bill, are supported by competent evidence, and should therefore be regarded as final and conclusive.

3. That the bill of complaint, including said transcript of the testimony, shows that at the time of the death of Maurice G. Weeks, deceased employee, the claimant, Annie Weeks, was his lawful wife, and the deputy commissioner's findings of fact with respect thereto are supported by com-

14 petent evidence and should therefore be regarded as
final and conclusive.

4. That the bill of complaint, including said transcript of the testimony, shows that at the time of the death of the said Maurice G. Weeks his wife, Annie Weeks, was partially dependent upon him for support and that it also appears from the record that at the time of said employee's death his wife was living apart from him for justifiable cause, with-in the meaning of section 2 (16) of the District of Columbia workmen's compensation law; that the deputy commissioner's findings of fact with respect thereto are supported by competent evidence and should therefore be regarded as final and conclusive.

5. That under the law showing of physical dwelling together of husband and wife is not necessary to support recovery of compensation; that the compensation order complained of is in all respects in accordance with law.

6. For such other good and sufficient reasons as may be shown.

DAVID A. PINE,
United States Attorney.

WILLIAM S. TARVER,
*Assistant United States Atty.
Attys. for Defendant Cardillo.*

15

Stipulation

Filed June 7, 1939

Plaintiff and defendant in the above-entitled action hereby stipulate and agree to consider the transcript of testimony taken before Frank A. Cardillo, Deputy Commissioner, United States Employees Compensation Commission on February 21, 1939, in the case of Annie Weeks v. Rudolph B. Behrend & Rudolph B. Behrend t/a Nachman Furniture Company, employer and Aetna Casualty and Surety Company, insurance carrier, Case Number 1720-15F, as an ex-

hibit to the Bill of Complaint filed in the above-entitled action, said transcript of the testimony to be read as part of plaintiff's bill.

(sgd) JAMES E. McCABE,
Attorney for plaintiffs.

(sgd) PAVID A. PINE,
U. S. Attorney.

(sgd) WILLIAM S. TARVER,
Attorneys for Defendant Cardillo.

* * * * *

16

Petition For Leave to Intervene

Filed June 10, 1939

The Petition of Annie Weeks respectively shows to this honorable Court as follows:

1. That she is a citizen of the United States and a resident of the District of Columbia, living at 511 A Street, S. E. Washington, D. C.

2. That she has been furnished with a copy of Civil Action No. 2791, filed by the plaintiffs as above-named, against the defendant as above-named, and that she is vitally interested in the subject matter of the said civil action No. 2791 in that the award which is the subject of litigation in said action was made in her favor by the defendant in the above
17 action against the plaintiff in the above action.

3. That she is informed and believes that her interests require that she be permitted to intervene in the said Civil Action and protect her rights in every way that she deems proper.

WHEREFORE, the premises considered, your petitioner respectfully prays as follows:

1. That she may be permitted to intervene in the above action as a party in interest therein.

2. And for such other and further relief as the nature of the case may require and to the Court may seem proper.

ANNIE WEEKS

DISTRICT OF COLUMBIA, ss:

Annie Weeks, being first duly sworn, on oath. deposes and says that she has read the foregoing Petition by her subscribed, and knows the contents thereof, and that the matters therein stated are true.

ANNIE WEEKS

Subscribed and sworn to before me, this 9th day of June, A. D. 1939.

C MAURY GOLD

Notary Public, D. C.

EMMETT LEO SHEEHAN

223 Bond Building,

Washington, D. C.,

Attorney for Petitioner.

18

Order Granting Leave to Intervene

Filed June 10, 1939

Upon consideration of the Petition for Leave to Intervene filed herein by Annie Weeks, and it appearing to the Court that she has a vital interest in the subject matter of the litigation in the above-captioned cause, it is, by the Court, this 10th day of June, A. D., 1939,

Adjudged, Ordered and Decreed that Annie Weeks be and she is hereby granted leave to intervene herein as a party defendant.

T. ALAN GOLDSBOROUGH

Justice

We consent: 6/6/39

JAMES E. McCABE

Attorney for Plaintiffs

19 *Motion of Annie Weeks, Intervening Defendant, to Dismiss Bill of Complaint*

Filed June 15, 1939

Now comes the Intervening Defendant, Annie Weeks, by her Attorney, Emmett Leo Sheehan, and moves this honorable Court to dismiss the Bill of Complaint filed herein for the following reasons:

1. That the bill of complaint filed herein does not state a cause of action and does not entitle plaintiffs to any relief in law or equity; nor does said bill state a claim against defendant upon which relief can be granted.

2. That the bill of complaint with exhibits, including the transcript of the testimony made a part of the bill by stipulation, shows that the findings of fact and award of
20 the deputy commissioner as contained in the compensation order filed April 19, 1939, in favor of Annie Weeks, complained of in the bill, are supported by competent evidence, and should therefore be regarded as final and conclusive.

3. That the bill of complaint, including said transcript of the testimony, shows that at the time of the death of Maurice G. Weeks, deceased employee, the claimant, Annie Weeks, was his lawful wife, and the deputy commissioner's findings of fact with respect thereto are supported by competent evidence and should therefore be regarded as final and conclusive.

4. That the bill of complaint, including said transcript of the testimony, shows that at the time of the death of the said Maurice G. Weeks, his wife, Annie Weeks, was partially dependent upon him for support; and that it also appears from the record that at the time of said employee's death his wife was living apart from him for justifiable cause, within the meaning of section 2 (16) of the District of Columbia workmen's compensation law; that the deputy commissioner's findings of fact with respect thereto are supported by competent evidence and should therefore be regarded as final and conclusive.

5. That, under the law, showing of physical dwelling together of husband and wife is not necessary to support recovery of compensation; that the compensation order complained of is in all respects in accordance with law.

6. For such other good and sufficient reasons as may be shown.

EMMETT LEO SHEEHAN
223 Bond Building,
Washington, D. C.,
*Attorney for Annie Weeks,
Intervening Defendant.*

• • • • •
21 *Order Denying Motions to Dismiss*

Filed July 27, 1939

This action came on to be heard upon separate motions of defendant Frank A. Cardillo and intervening defendant Annie Weeks to dismiss the complaint filed herein, and upon consideration thereof, it is by the Court this 27th day of July, 1939,

Ordered, Adjudged and Decreed, that the motions to dismiss said complaint be and the same are hereby denied.

JENNINGS BAILEY
Justice

No Objection as to Form

JOHN J. WILSON,
Asst. U. S. Atty. D. C.
Attorney for Defendant Frank A. Cardillo

EMMETT LEO SHEEHAN
*Attorney for Intervening Defendant
Annie Weeks.*

• • • • •

Filed Aug. 3, 1939

Further Answering the allegations of the bill, the defendant Cardillo says: That as shown by the transcript of the testimony taken at the hearing before the deputy commissioner on February 21, 1939, and made a part of the bill by stipulation of counsel, and as stated by the averments of the bill, the issues before the deputy commissioner in this

case were (1) whether Annie Weeks' marriage to Maurice G. Weeks, the deceased employee, was lawful; (2) whether Annie Weeks was living apart from Maurice G. Weeks for justifiable cause, within the meaning of section 2(16) of the District of Columbia workmen's compensation law; and (3) whether Annie Weeks was dependent upon Maurice G. Weeks at the time of his death, within the meaning of section 2 (16) of said law; that in preparing the compensation order of April 19, 1939, complained of in the bill, the defendant deputy commissioner inadvertently omitted to make specific findings of fact in said order with respect to the dependency of the said Annie Weeks upon the deceased employee at the time of his death; that it is important that such findings of fact be made as they will have an important bearing upon the question whether Annie Weeks was the "widow" of said employee, within the meaning of section 2 (16) of the compensation law.

24 Wherefore, the defendant deputy commissioner prays: That the court, in order that the case may be remanded to the deputy commissioner with instructions to make such further findings as are necessary with respect to the question of the dependency of Annie Weeks upon Maurice G. Weeks, the deceased employee, at the time of his death, and in order that the deputy commissioner may make such further findings of fact relating to the status of said Annie Weeks as the evidence may warrant, set aside said compensation order of April 19, 1939, complained of in the bill, and that the case be accordingly remanded to the deputy commissioner for such purpose.

FRANK A. CARDILLO

By JOHN J. WILSON

Assistant United States Attorney.

DAVID A. PINE

United States Attorney.

JOHN J WILSON

*Assistant United States Attorney,
Attorneys for Defendant Cardillo.*

District of Columbia, ss:

John J. Wilson, being duly sworn, deposes and says that he is an Assistant United States attorney in and for the District of Columbia; that he is the attorney for the defendant Frank A. Cardillo; that he has read the foregoing answer subscribed by him on behalf of the said defendant, and verily believes the allegations therein contained to be true. Affiant makes this verification by reason of the absence from the District of Columbia of the said Frank
 25 A. Cardillo, such verification being provided for by Rule No. 9 of this Court.

JOHN J. WILSON

Assistant United States Attorney.

Subscribed and sworn to before me this 3rd day of August, 1939.

LILLIAM A. TRAMMELL

Notary Public

26 *Separate Answer of Annie Weeks, Intervening Defendant, to Bill of Complaint for Injunction and Other Relief Under Compensation Statute.*

Filed Aug. 5, 1939

The separate answer of Annie Weeks, Intervening Defendant, to the Bill of Complaint herein filed, respectfully shows that by virtue of an order passed by the court in this case on the 10th day of June, 1939, she was granted leave to intervene herein as a party defendant, and she accordingly makes answer to the aforesaid Bill of Complaint as follows:

1, 2, 3, 4, 5, 6, 7. She admits all the allegations in paragraphs 1, 2, 3, 4, 5, 6, and 7.

8. She admits that the defendant deputy commissioner on April 19th, 1939, issued a compensation order, a copy of which is attached to the complaint, marked plaintiff's "Exhibit A", an excerpt from which is contained in para-

graph 8, and that said order made the compensation
27 award, and award of legal fee as therein shown. All
the other allegations in paragraph 8 are denied.

9. Further answering the bill of complaint, the intervening defendant Weeks says that the complete transcript of the testimony in this case with briefs as referred to therein, all of which is made a part of the bill of complaint by stipulation, shows that the Deputy Commissioner had before him for decision (1) whether or not Annie Weeks' marriage to the employee was lawful, (2) whether she was living together with him at the time of his death, or, if not, whether she was living apart from him for justifiable cause, and (3) whether or not Annie Weeks was dependent upon Maurice G. Weeks at the time of his death within the meaning of the District of Columbia Workmen's Compensation Law.

10. In preparing the Compensatiton Order of April 19, 1939, complained of, the defendant Deputy Commissioner inadvertently omitted to make a specific finding of fact in said order with respect to the dependency of Annie Weeks upon Maurice G. Weeks at the time of his death. It is important that a finding in this respect should be made because it will have an important bearing upon the question of whether Annie Weeks was the "widow" of said employee, within the meaning of Section 2 (16) of the aforesaid compensation law.

11. Also, the said order of April 19, 1939, stated, among other things,

" * * * the employee remained on friendly terms with his wife and that they met frequently up to the date of his death; that the employee contributed to the wife's support whenever he was able to and in such amounts as he was able to afford; that at the time of the death of the employee Annie Weeks was living apart from him for justifiable cause;"

and by said quoted language, the Deputy Commissioner created an inconsistency and ambiguity between the prem-

ise as to the relationship of the parties as shown by said language and the whole record, and his conclusion as to Annie Weeks status respecting her relationship with her husband, Maurice G. Weeks, at the time of his death. The ambiguity and inconsistency in this respect should be clarified as this will also have an important bearing upon the question of whether Annie Weeks was the "widow" of said employee, within the meaning of Sec. 2 (16) of said compensation law.

28 Wherefore, the intervening defendant Weeks prays: That the court, in order that the case may be remanded to the Deputy Commissioner with instructions to make such further findings as are necessary with respect to the question of the dependency of Annie Weeks upon Maurice G. Weeks, the deceased employee, at the time of his death, and in order that the deputy commissioner may make such further findings of fact relative to the status of the said Annie Weeks as the evidence may warrant, set aside the said compensation order of April 19, 1939, complained of in the bill, and that the case be accordingly remanded to the deputy commissioner for such purpose.

ANNIE WEEKS.

District of Columbia, ss:

Annie Weeks being first duly sworn according to law deposes and states that she has read the foregoing answer by her subscribed and verily believes the facts set forth therein to be true.

ANNIE WEEKS.

Subscribed and sworn to before me this 3d day of August, 1939.

ELPHESE DESGRESS,
Notary Public.

EMMETT L. SHEEHAN,
223 Bond Bldg.,
REpublic 0400,
Attorney for Annie Weeks
Intervening Defendant.

Filed Jan. 24, 1942

Now comes the defendant, Frank A. Cardillo, deputy commissioner, by his attorney, and moves this Honorable Court to enter, upon the pleadings and record herein, a judgment setting aside the compensation order filed by the deputy commissioner on April 19, 1939, complained of in the bill, and remanding to the deputy commissioner the above entitled case with instructions to make such further findings of fact as are necessary with respect to the question of dependency of the defendant, Annie Weeks, upon Maurice G. Weeks, the deceased employee, at the time of his death, and to file a new compensation order based upon such findings, and in support thereof the defendant says:

1. That as shown by the transcript of the testimony taken at the hearing before the defendant deputy commissioner on February 21, 1939, and made a part of the bill by stipulation of counsel, and as stated by the averments of the bill, the issues before the deputy commissioner in this

31 case were (1) whether Annie Weeks' marriage to Maurice G. Weeks, the deceased employee, was lawful; (2) whether Annie Weeks was living apart from Maurice G. Weeks for justifiable cause, within the meaning of section 2 (16) of the District of Columbia workmen's compensation law; and (3) whether Annie Weeks was dependent upon Maurice G. Weeks at the time of his death, within the meaning of section 2 (16) of said law; that in preparing the compensation order of April 19, 1939, complained of in the bill, the defendant deputy commissioner, as set forth in his answer to the complaint, inadvertently omitted to make specific findings of fact in said order with respect to the matter of dependency of the said Annie Weeks upon the deceased employee at the time of his death; that it is important that such findings of fact be made, as they have a material bearing upon the question whether Annie Weeks is the "widow" of said employee, within the meaning of section 2 (16) of said compensation law.

2. That defendant is entitled as matter of law, on the record, to a judgment remanding the case to him as deputy commissioner for completion of material findings.

EDWARD M CURRAN

United States Attorney.

BERNARD J LONG

*Assistant United States Attorney,
Attorneys for defendant Cardillo.*

32 I, Bernard J. Long, Assistant United States Attorney, attorney for the defendant Cardillo, hereby certify that a copy of the foregoing motion to dismiss, together with copy of notice and memorandum of points and authorities in support thereof, were served upon James E. McCabe, Esq., counsel for plaintiffs, by mailing copies thereof to him at his address, Transportation Building, Washington, D. C.

BERNARD J. LONG,

*Assistant United States Attorney,
Attorney for Defendant Cardillo.*

32

Motion for Summary Judgment

Filed Jan. 27, 1942

Comes now the plaintiffs, through their attorney, James E. McCabe, and move the Court for summary judgment.

JAMES E. McCABE

Attorney-for-plaintiffs

Transportation Building
Washington, D. C.

Findings of Fact

Filed Apr. 1, 1942

1. This is a suit brought under Section 21 of the Longshoremen's and Harbor Worker's Compensation Act, (U. S. C. A. Title 23, Chapter 18, as made applicable to the District of Columbia by the Act of May 17, 1928—D. C. Code Title 19, Chapter 2, and amendments thereto) in force in the District of Columbia, wherein Rudolph B. Behrend and Rudolph B. Behrend trading as Nachman Furniture Company, a corporation, and Aetna Casualty & Surety Company, a corporation, as plaintiffs, seek an injunction pendente lite and permanently restraining the enforcement of a Compensation Order dated April 19th, 1939, issued by the defendant Frank A. Cardillo, Deputy Commissioner, District of Columbia District, U. S. Employees' Compensation Commission, pursuant to the authority of Sections 19 and 21 of the aforesaid act. The defendant Annie Weeks, claimant, and beneficiary under the Compensation Order was permitted to intervene as defendant after the suit was filed.

2. By stipulation filed June 7, 1939, plaintiffs and defendant agreed to consider the transcript of the testimony taken before Frank A. Cardillo, Deputy Commissioner, United States Employee's Compensation Commission, on February 21, 1939, in the case of Annie Weeks v. Rudolph

B. Behrend and Rudolph B. Behrend t/a Nachman
34 Furniture Co. employer, and Aetna Casualty and
Surety Company, insurance carrier, Case No. 1720-
15F as an exhibit to the Bill of Complaint filed in this case, said transcript of the testimony to be read as part of plaintiff's bill.

3. The Motion to Dismiss the Bill of Complaint filed by defendant Cardillo, and the Motion to Dismiss the Bill of Complaint filed by the defendant Weeks were both denied.

4. There is no substantial and competent evidence to sustain the findings of fact "that at the time of the death of the employee Annie Weeks was living apart from him for

justifiable cause" as the phrase "living apart for justifiable cause" is used in the Compensation Act.

Conclusions of Law

I. The Compensation Order of April 19th, 1939, is "not in accordance with law" for the reasons stated in paragraph 4 of the above findings of fact.

II. That neither the defendant Cardillo, nor the defendant Weeks is entitled as a matter of law, on the record, to have the Court enter judgment setting aside the Compensation Order of April 19th, 1939, and remand the case to the Deputy Commissioner with instructions to make any further or different findings of fact, or to correct any mistake of omission or commission, or to issue any new or different Compensation Order whatsoever.

III. That the plaintiffs are entitled as a matter of law, on the record, to have the Court enter judgment setting aside the Compensation Order of April 19th, 1939, and restraining permanently the enforcement of said order in whole or in part.

JENNINGS BAILEY

Justice

35 *Order for Summary Judgment and Granting
Permanent Injunction*

Filed Apr. 1, 1942

This cause came on for hearing on the motion of the plaintiffs for a summary judgment and on motion of defendant, Frank A. Cardillo, for summary judgment, and after argument by counsel for the plaintiffs, counsel for defendant Frank A. Cardillo, Deputy Commissioner, and counsel for Annie Weeks, intervening defendant, it is this 1st day of April, 1942.

Ordered that the motion for summary judgment filed on behalf of the defendant, Frank A. Cardillo, Deputy Commissioner, be and the same is denied, and it is

Ordered that the motion for summary judgment filed on behalf of the plaintiffs be and the same is hereby granted for the reason that the Compensation Order, Award of Death Benefits, dated April 19th, 1939, is not in accordance with law, and it is

36 Adjudged, Ordered and Decreed that the defendants Frank A. Cardillo, Deputy Commissioner of the U. S. Employees Compensation Commission, District of Columbia Compensation District, and Annie Weeks, be and they are hereby permanently enjoined from enforcing or attempting to enforce the Compensation Order, Award of Death Benefits described in the bill of complaint filed in this cause, and said Compensation Order, Award of Death Benefits, dated April 19th, 1939, be and the same hereby is wholly suspended and set aside.

JENNINGS BAILEY

Justice

No objection to Form:

W E BOOTE

*Attorney for Defendant Frank A. Cardillo,
Deputy Commissioner*

EMMETT L SHEEHAN

*Attorney for Annie Weeks
Intervening Defendant*

II.

**EXCERPTS FROM TESTIMONY AND PROCEEDINGS
DESIGNATED BY APPELLANT.**

48 United States Employees' Compensation Com-
mission for the District of Columbia

Before Honorable Frank A. Cardillo,
Deputy Commissioner for the District of Columbia

Case No. 1720 F.
(Maurice G. Weeks, deceased)
ANNIE WEEKS, *Claimant*,

v.

RUDOLPH B. BEHREND & RUDOLPH B. BEHREND, trading as
NACHMAN FURNITURE COMPANY, *Employer*,

AETNA CASUALTY AND SURETY COMPANY, *Insurance Carrier*.
Transcript of Testimony at Hearing.

Filed June 30, 1939

Pursuant to notice, this hearing came on before Honorable Frank A. Cardillo, Deputy Commissioner, United States Employees' Compensation Commission, at Washington, D. C., on the 21st day of February, 1939, at 10 o'clock a. m.

Appearances:

Emmett Leo Sheehan, Esquire, in behalf of the claimant;

James E. McCabe, Esquire, in behalf of the respondent.

• • • • •

54 The Deputy Commissioner: The brief on behalf of the insurance company, and the one for the claimant received on December 19, 1938. Both will be considered in connection with this case.

Now, do the admissions already made include all the facts in the case in which I may draw up complete findings of

fact with respect to the various marriages of the deceased and his status immediately prior to his marriage with Annie Weeks ?

Mr. Sheehan: The exhibits received for the record, while they do not cover all the marriages and all the deaths of the prior wives are, however, sufficient to determine the legal point and the legal issue raised by the employer's insurance carrier in this case; namely, that the present claimant, Annie Weeks, is or is not the lawful wife of the deceased because he married her in Alexandria, Virginia, subsequent to the decree of December 16, 1913, signed by Justice Stafford in Equity 31649 in the Supreme Court of the District of Columbia. Am I correct, Mr. McCabe?

Mr. McCabe: Yes, and if you can also add to that that at the time I wrote my brief the history of the previous marriages I think were correctly stated in the opening paragraph or two in my brief. You will remember that, I think.

Mr. Sheehan: I will admit that to be true on the condition that you likewise admit to be true the facts that I have recited in my brief.

Mr. McCabe: Oh, yes.

The Deputy Commissioner: All right. The only issue left then to be considered today is the question of whether or not Annie Weeks was dependent on the deceased for support at the time of his death; whether she was living with or apart for a justifiable cause, or dependent on him for support in the status of wife.

Mr. McCabe: I think at the time we had the preliminary hearing the contention was made she was living with and dependent for support on Maurice G. Weeks at the time of his death.

Mr. Sheehan: That is not correct. I was also present at the hearing and represented the claimant at that time. The claim was made that she was dependent on him for support to a degree that he was able to support her, and that they had not discontinued the marital relationship, although at the time of the death of the deceased, under a mu-

56 tually satisfactory arrangement, they were living at different addresses.

The Deputy Commissioner: Now, do you contend that they were living apart for a justifiable cause?

Mr. Sheehan: For a justifiable cause.

The Deputy Commissioner: That is not accepted, is it, Mr. McCabe?

Mr. McCabe: No, and it is the first time I have heard it raised, and I think if your Honor will look through the file and see the question raised before Mr. Belair at that time that she was living with and dependent for support on at that time.

Mr. Sheehan: That is not correct. At the time of the hearing Mr. McCabe raised the point of the legality of the status of Mrs. Weeks as widow.

Mr. McCabe: I raised two points.

Mr. Sheehan: Yes.

The Deputy Commissioner: Just a minute. Let me get this record straight; when you refer to a prior hearing there is no prior hearing. It is a conference; it is only an attempt to dispose of the case by informal means.

Mr. Sheehan: I will correct my statement to say that at the informal conference before Mr. Belair, Mr. McCabe indicated by way of defense on behalf of the employer and insurance carrier that he would raise two points: first, that

57 the claimant was not the lawful widow of the deceased and, second, that their status was such at the time of his death even if she was the lawful widow she would not be entitled to benefits.

The Deputy Commissioner: Why?

Mr. Sheehan: Because he claimed, and we deny it, that they were not living apart for justifiable cause, and that furthermore he was not contributing to her support.

The Deputy Commissioner: Well, that matter seems to be the same contention raised today by Mr. McCabe.

Mr. Sheehan: The only place where we are at odds is as to my position in the informal conference. Mr. McCabe

suggested, and Mr. Belair agreed, that it would not be necessary to go into the second point if the employer—

The Deputy Commissioner (interposing): The second point now, is referring to dependency?

Mr. Sheehan: Yes.

The Deputy Commissioner: If the employer—

Mr. Sheehan (interposing): If the employer could establish that the claimant was not the legal wife, it was suggested by the claims examiner at this conference that Mr. McCabe submit a brief on the facts and legal authorities to support his proposition and that we likewise should submit a brief in answer to his brief in support of the claimant's position. This was done, as the record will show, and by letter on December 29, 1938, Mr. Belair suggested that
 58 the sound legal position was that assumed by the claimant, and that the carrier should accept liability and proceed to pay death benefits in accordance with the terms of the Act.

Mr. McCabe: And when the carrier received this notification from Mr. Belair, the carrier answered that letter with a letter to the Commission under date of December 30, 1938, noting exceptions to the claims examiner's ruling, and Mr. Belair's attention was also called in this letter to the fact that I raised the contention at the informal conference that this widow was not living with or dependent for support upon Maurice G. Weeks at the time of his death, although the widow claimed she was living with Maurice G. Weeks at the time of his death.

* * * * *

Mr. McCabe: The examiner's attention was also called to the fact that there had been no hearing on this angle of the case, as it was understood that the marriage question should be disposed of first.

Mr. Sheehan: That is precisely correct. There was no hearing on that angle of the case and our contention was that she was entitled to benefits. I was not furnished with a copy of the letter, but I should not have done anything

about it if I had been except to arrange for a formal hearing.

59 The Deputy Commissioner: Are you prepared to offer evidence today on the question as to whether the claimant, Annie Weeks, was living apart for justifiable cause?

Mr. Sheehan: Yes.

The Deputy Commissioner: And are you prepared to go into the question of dependency today?

Mr. Sheehan: Yes.

The Deputy Commissioner: All right, let's proceed.

* * * * *

60 Q. And you were married to Maurice G. Weeks at Alexandria, Virginia, on the 8th day of August, 1934?

A. Yes, sir.

Q. Where were you living at that time? A. I was living on H Street, Northwest.

Q. And after your marriage did you return to the District of Columbia? A. Yes, sir.

Q. With Mr. Weeks? A. Yes, sir.

Q. Were you living together as man and wife at that address? A. Yes, sir.

Q. Were you operating any kind of business there? A. Yes, sir, I was renting rooms.

Q. Renting rooms? A. Yes.

Q. Did Mr. Weeks assist you in the operation of the house? A. Yes, that was part of our agreement.

The Deputy Commissioner: I don't hear you, Mrs. Weeks; you will have to speak a little louder.

The Witness: That was part of our arrangement that we continue this place up there; that was our arrangement because I needed his help very badly.

By Mr. Sheehan:

61 Q. What was the condition of your health at that time? A. Well, at that time apparently it was all

right, but there was too much work there for any one woman, or any two women to do.

Q. Was Mr. Weeks helping you in this business? A. He helped me in every way he could when he was able to, he kept the fires, cleaned, took care of the cellar, cooked my meals when I was sick.

Q. And without his assistance you couldn't have operated the house? A. No; I was considering giving it up before that because I couldn't do the work.

Q. Did there come a time afterward when you and Mr. Weeks moved from that address to a different address? A. Well, there are a few things that should be gone into previous, because in February I was taken ill, you have a record of that, and I was ordered to go to a specialist for my nose and ears, and I couldn't afford to go to a specialist because at that time I was renting to relief occupants and couldn't get my rent, and I had to go to the ear, nose, and throat clinic.

* * * * *

62 A. Yes.

By Mr. Sheehan:

Q. Now, during the time you were sick who took care of the house? A. Well, he did, what was done; of course, I wasn't abed.

Q. He did the work? A. Yes, sir.

Q. And you lived together as man and wife? A. Yes.

Q. Did he do any of the work? A. Yes, some.

Q. What work did he do? A. At his trade, bricklayer and cement work.

Q. Did he bring in an income? A. Yes, some; of course, he was working for the Merchants Express at the time I married him, but a short time after that they put all colored help on and he was laid off.

* * * * *

63 By Mr. Sheehan:

Q. Coming up to the spring of 1936, did Mr. Weeks take up a different address from yours? A. Well, I don't know the time, the dates; I can't give you the dates.

Q. Say about fifteen, sixteen, or seventeen months after you were married did he take up a different residence? A. Yes, for business reasons.

Q. What were the circumstances of your arrangement whereby he came downtown and you stayed down there? A. Well, I will have to go back to tell this, to tell it correctly, because—

Q. (Interposing) Mrs. Weeks, at that time when he left you had moved to a— A. (Interposing) A smaller place because I couldn't keep up the other.

Q. Your health had broken? A. Yes.

Mr. McCabe: Where did she move to?

The Witness: 511 A, Southeast.

By Mr. Sheehan:

Q. 511. A, Southeast, so when he left you, when you separated for the reasons which you will indicate later, you were in a small house at 511 A Street Southeast? A. Yes, sir.

64 Q. And this was about sixteen months after your marriage? A. Well, along about that.

Q. As near as you can say; I don't assume you kept any record of dates.

* * * * *

Q. Now, when he went to a different address on Eye Street did you keep in constant touch with him? A. Yes, sir.

Q. How often would you see him, how often would you see each other? A. Well, once a week or once in two weeks, he would come back and forth when he wasn't busy or I would go downtown at least that often.

Q. Why did he come downtown? A. That is the case where I will have to go back on.

Q. All right. A. When he tried to get this workmen's fund my health was failing and he tried to get on this public works, where he had been an applicant for four years; he was turned down and told he couldn't have it because I rented to roomers. Of course, he didn't get it, and I don't know just how long it was before he got it, but he finally did get it, and at that time we felt we were going to be all
 65 right now, and, of course, shortly after that he was badly hurt on this scaffold, elevator, and they gave him a small compensation on which he couldn't live because they knew positively he was married, and we were living in two rooms which had to be paid for.

Q. But he did get a small compensation? A. He did get a small compensation, however, which was of no benefit to him because it was not enough; of course, he stayed there a long time, and he finally—

Q. (Interposing) After he was injured he stayed there—
 A. (Interposing) Quite a while, yes, and worked around the house and did as much as he could.

Q. He did as much as he could? A. Yes, I was sick then.

Q. And when he was able to work in the spring of 1936 he went uptown? A. No, it was after that; I don't know just the date, but doing the jobs he did he wasn't known up there where I lived, and his son, one of them, was known throughout Ninth Street, and through him and Mr. Fuller he was able to pick up his jobs down there, and he didn't have carfare to go back and forth, and so he took this small room down there so he would be accessible to the job where he was working.

Q. Now, in the two years preceding his death, during that period when he didn't have work uptown did he also
 66 come over to help you at A Street? A. Yes.

Q. How many times did he help you? A. I didn't keep any record, but he would help, and we would also have meals downtown.

Q. Would also have meals downtown? A. Yes.

Q. Now, during that period, these two years immediately preceding his death, approximately how much money did he

give you, say, on the average? A. I can't make any estimate about that because I didn't keep any account, but he passed me a large part of every job he got.

Q. How much a month would that amount to? A. I wouldn't state that amount because it would run different prices, because as soon as he would get the work for a job he would give it to me.

Q. Give you the money? A. Yes.

Q. What was the largest sum he gave you at any one time? A. \$43.

Q. And that was work he had done uptown? A. Yes.

* * * * *

68 Q. Now, how many times a month on an average were you together during the last year of his life, either you visited him or he visited you? A. I didn't get that?

Q. How many times on an average were you together? A. Well, I would say once every two weeks and sometimes every week.

Q. Sometimes every week? A. Yes, sir, but I would say about on an average of every two weeks.

Q. And you were on friendly terms? A. Yes, absolutely.

Q. And was there any other reason than the reason you have already given to us of his living uptown and being accessible to those whom he knew could furnish him some work? Was there any other reason that he left the household and came uptown? A. Well, yes, since they told him that he wasn't eligible for public work if I rented rooms on H Street; of course, the house was larger; over here I rented part of the house, and he was afraid his compensation he was getting would be taken from him if they questioned my renting those rooms, which they didn't, but that was his idea, and I had the same fear, although I didn't say anything about it.

Q. Did you understand he succeeded in getting relief? A. The first I knew of him being on was that he was doing what work they could give him before he went to Greenbelt.

He wasn't working regularly, but he was working because I went up with him one day to get the money with him, that new building at Fifteenth and E; I don't know the name, and that was previous to the time he went to Greenbelt.

Q. When did he go to Greenbelt, do you know? A. That was, I think, in April; I am not positive.

Q. April of 1936? A. Yes, I think it was, because he wasn't there long when he was hurt.

Q. When he was at Greenbelt how much did he earn? A. I understood he was allowed \$72 a month.

Q. And how much of that \$72 a month did you receive? A. I handled it because we were living at the home where I now am, and I paid all the bills and bought food.

Q. At Greenbelt he was living at your house? A. Yes.

Q. How did he get from your house to Greenbelt? A. He walked to the Union Station and they took the whole bunch out in cars; he walked from where I live now to Union Station.

Q. Do you know how much relief money he was drawing toward the end of his life? A. Not exactly.

Q. Did you receive any of that money? A. Yes, sir, part of it; of course, I understood it to be compensation for him being hurt at Greenbelt.

Q. You don't know whether it was compensation or relief money? A. Well, it was supposed to be, because I went to the Compensation Bureau myself and got it there for him.

Q. You did get some of that money? A. Oh, yes, I was down there two or three times.

Q. And during the last year of his life how many times did he come over to A Street to help you? A. Well, I didn't keep any record of it, but he was over there frequently and helped me as much as he could, he helped me when I was sick, and every time he came he helped all he could, and several times he did the cooking because I was sick, because shortly after that—You have the cards on that,

too—I lost the use of this arm and didn't use it the whole winter, and I then had treatments at Providence Hospital. You have the statements all there.

* * * * *

76 By the Deputy Commissioner:

Q. Let me interpose one question here; it isn't clear to me, did your husband move with you to 511 A Street, Southeast? A. Yes, sir.

Q. In November, 1935? A. Yes, sir.

Q. He lived with you there for a while? A. Yes.

* * * * *

81 The Witness: That we had been living together as man and wife, well, he asked me that when he wrote it down and I said certainly we were living together as man and wife; simply because he had a place for business reasons doesn't alter the fact that we were man and wife, does it? That has nothing to do with that, does it.

* * * * *

82 The Deputy Commissioner: You mentioned that already.

The Witness: And this reference he makes here to my helping him; naturally, after he got hurt I had to do my part as his wife until he got his compensation; that covers that part where he says I assisted him. I was his wife; he was laid up.

The Deputy Commissioner: That is true, then, that you did help him?

The Witness: Certainly; he stayed at my place. We had to have something to eat.

By the Deputy Commissioner:

Q. Just a minute. Listen to the question: Is there anything wrong in that statement? A. It is wrong in that way, only that he didn't give the reasons for it.

Q. Is it wrong or right, did you help him or didn't you? A. I had to.

Q. All right, then it is right, and you want to give your reasons for it; is that right? A. He was living with me as my husband and I was his wife, and what else was I to do?

Mr. Sheehan: That's all right.

The Witness: But this gentleman makes reference
83 that we were living together as man and wife, while
the reason I signed the statement so there was be-
cause we were man and wife, though not always living at
the same address. That is right here.

* * * * *

86 By Mr. McCabe:

Q. Now, in 1937, when he was living at his address at 810 Eye Street, Northwest, do you remember where he worked in the year 1937? A. Well, part of it he was doing mostly job work.

Q. When was he injured at Greenbelt? A. '36.

Q. 1936? A. Yes.

Q. How long was he laid up as a result of that injury? A. Well, he didn't do any work at all for some time, but he did job work after that, but he never completely recovered from it.

Q. How many weeks' compensation did he get as a result of the injury at Greenbelt? A. I don't know that; that was continued.

Q. You say you went down to help him put down his claim for compensation; who did he get it from? A. That compensation; that used to be on Seventh Street.

Q. The United States Employees' Compensation Commission? A. Yes.

Q. And he was working as a Government employee?

A. Yes.

By the Deputy Commissioner:

87 Q. As a Government employee? A. Yes.

By Mr. McCabe:

Q. And you don't know how long he got this compensation? A. I understood that continued all the time.

Q. Up to when? A. Until he died, that was my impression about that.

Q. You were under the impression he got it up until he died? A. Yes, sir; he told me it was only \$25.

Mr. McCabe: Are you willing to give me a record of the United States Employees' Compensation showing injury to Mr. Maurice Weeks in 1936 at Greenbelt?

Mr. Sheehan: Yes, I will get that whole record and put it in.

I contended all the time that that should be put in.

* * * * *

95 Q. Do you know how long after your husband had been injured and had left the Greenbelt job, that is getting back to 1936 and running through to the time of his death in 1938, do you know whether or not your husband was on relief for the District of Columbia? A. No, sir, I was under the impression it was considered compensation for being injured. I didn't know anything about it.

Q. Did you ever see any of the checks he received? A. The first ones I did; the last ones I did not.

Q. Didn't you know as a matter of fact, that there was a time when the compensation checks didn't come to him? A. No.

Q. Was it your impression that he received compensation from the United States Employees' Compensation Commission from the year 1936 up to the time he died? A. I understood it was for being injured, yes, sir.

* * * * *

102 By the Deputy Commissioner:

Q. Mrs. Weeks, I want to ask you some questions, don't volunteer anything; if you can answer yes or not, do so.

* * * * *

104 He didn't just pick up and leave, did he? A. No, sir.

Q. You wouldn't say then, that he deserted you, would you? A. Oh, absolutely not; we had a few arguments, but

that is all, and they didn't amount to anything, and that was over finances, and our getting by, each one getting by; we had to live, you know.

Q. Did he make any demands upon you for money? A. No, sir.

Q. Did you make demands upon him for money? A. No, sir, it was an agreeable arrangement; no, sir, I didn't make any demands.

Q. What was the agreeable arrangement? A. Sir.

Q. What was an agreeable arrangement, what do you mean by that? A. Well, I had reason to feel he did the best he could for me under his unfortunate circumstances.

Q. In so far as giving you money is concerned? A. Yes, because he was very unfortunate in getting hurt at that time.

105 Q. Were any of the payments that he made to you payments of money for anything but support? A. No, certainly not. What else would there be?

Q. I am asking you, now, Mrs. Weeks. I want you to tell me. I don't know the circumstances. A. Well, he was living—as I say, was the only thing that counted between us was that we each had to live, and it was pretty hard, and I wanted to be fair, I wanted him to have something to eat as well as myself.

* * * * *

106 A. Yes, because, as I say, I never made any demands, but when he knew he was to get it we always made arrangements to meet and went out; I could have gotten more from him, too, I guess, but I wanted him to live, too.

107 **Maurice Olin Weeks**

was called as a witness for and in behalf of the claimant, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

Direct Examination

By Mr. Sheehan:

Q. What is your name, please. A. Maurice Olin Weeks.

Q. What is your relation to Maurice G. Weeks? A.
108 My father.

By the Deputy Commissioner:

Q. You are his son, is that right? A. Yes, sir.

By Mr. Sheehan:

Q. Of course, you know that your father died on June 23, 1938, as a result of an injury sustained in an elevator accident? A. Yes.

Q. You saw him at the hospital, I take it, before he died?
A. Yes.

Q. Was Mrs. Weeks there? A. She was.

Q. Do you know about the relations between Mrs. Weeks and your father during the last year before he died? A., Well, it was all right as far as I know; he never indicated that it was any other way. I used to go up there weekends and he used to speak very highly of her. I used to do down to their house for dinner.

* * * * *

109 Q. From the time they were married up to the time of his death to the best of your knowledge what were their relations? Were they friendly or otherwise?
A. Friendly as far as I know; I never knew otherwise, he never indicated to me any other way.

Q. From your contact with your father you knew he and his wife were good friends. A. Yes.

120 Examination in Chief

By the Deputy Commissioner:

Q. Do you know why your father was living apart from Mrs. Weeks? A. Do I know why?

Q. Do you know why? A. I do not. I never asked him anything about domestic questions and he never told me, and I never asked him why he was living apart; I never heard.

Q. When you say before that your father did support Annie Weeks, what makes you say that? What knowledge have you for saying that? A. For the simple reason he has told me they were together and what he has done.

Q. What did he say they had done? A. I don't recall exactly, but that they had been to this place or that place, and talked of different places.

Thereupon

135

Lucy Barry

was called as a witness for and in behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

Direct Examination

By Mr. McCabe:

Q. Mrs. Barry, where do you live? First, state your name. A. Mrs. Lucy Barry, 810 Eye Street, Northwest.

Q. What do you do? A. Keep a rooming house.

Q. How large a rooming house do you have? A. I have two, twenty-two rooms.

Q. Do you have two together there? A. Yes.

Q. Is it 810 and 812? A. Yes.

Q. How long have you maintained a rooming house at that place? A. One for eight years and one for five.

Q. Did there ever come a time when you became acquainted with Maurice Weeks? A. Yes.

Q. Will you tell the Commissioner when he first
136 came to room with you? A. I couldn't say day or date.

Q. Well, roughly about when? A. It was '34 or '35.

Q. How long did he stay with you at that time? A. He stayed four or five months and left to marry.

Q. And when did he come back again? A. I couldn't say exactly when it was, but it seems it was more than a year.

The Deputy Commissioner: More than a year later?

The Witness: Yes.

By Mr. McCabe:

Q. Now, when he came back to live with you did you have any conversation with him? A. Well, not pertaining to his marriage or anything like that.

Q. And where did he take a room with you? A. At 810.

Q. At 810; did he continue to live in that room from that time until he died? A. No, he moved to 812; I had the room over there he liked better.

Q. And did he continue to live at 810 or 812? A. Yes.

Q. From the time he came back the last time you
137 say a couple of years ago up until the time he died?

A. Yes, sir.

Q. Now, did you ever see this lady here, Mrs. Weeks, visiting him at that address? A. Yes, at 810, once at 812.

Q. When was the last time you saw her visit him where he lived? A. She visited at 812 then, I couldn't say whether it was in the winter or not, but I saw her coming out at the door one day there and Mr. Weeks told me his wife and been to see him.

* * * * *

Q. Now, coming back to the one and a half years prior to his death, how many times in your estimation has she visited him at your place? A. Well, I couldn't really say; I saw Mrs. Weeks a couple of times, but she could have been there more because I don't see everybody that comes in.

* * * * *

139 Cross-Examination

By Mr. Sheehan:

Q. I believe you were talking with me last night, weren't you? A. Yes, I think it was you.

Q. Well, take a good look, now, and be sure; I believe you said that Mr. Weeks came back to live with you the second time about 16 months after he was married? A. I wouldn't know whether it was 16 or not.

Q. Well, it was more than a year anyhow? A. Yes.

Mr. Sheehan: That is all.

* * * * *

**BRIEF AND APPENDIX
FOR APPELLEES**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8319

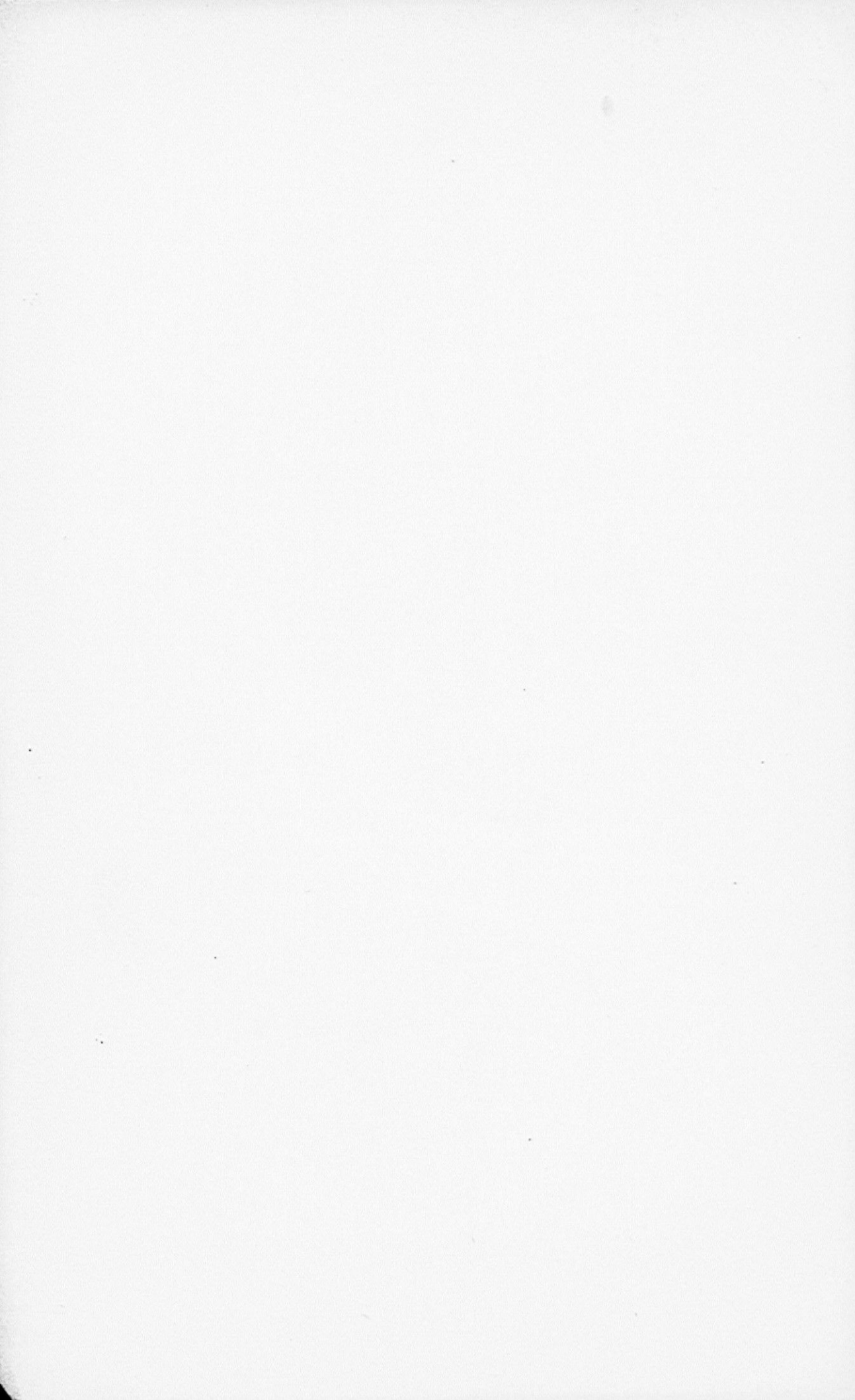
ANNIE WEEKS, *Appellant*,

v.

RUDOLPH B. BEHREND, ET AL., *Appellees*.

**Appeal from the District Court of the United States for the
District of Columbia.**

JAMES E. McCABE,
*Attorney for Rudolph B.
Behrend, et al., Appellees.*



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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

No. 8319.

ANNIE WEEKS, *Appellant*,

v.

RUDOLPH B. BEHREND, ET AL., *Appellees*.

**Appeal from the District Court of the United States for the
District of Columbia.**

BRIEF AND APPENDIX ON BEHALF OF APPELLEES

COUNTERSTATEMENT OF CASE.

This is a proceeding for judicial review of the findings of fact and conclusions of law, and order for summary judgment and granting permanent injunction signed by Justice Bailey in the District Court of the United States for the District of Columbia on April 1st, 1942 (Appellant's appendix R. 25, 26, 27).

The order for summary judgment and granting permanent injunction in favor of the appellees involved a compensation order and award of death benefits to Annie W. Weeks, appellant, dated April 19th, 1939, issued by Frank A. Cardillo, deputy compensation commissioner.

From the compensation order and award of death benefits by the deputy commissioner the appellees noted an appeal under section 921 (b) of the Compensation Act, namely the Longshoremens and Harbor Workers' Compensation Act of March 4th, 1927 (44 Stat. 1424) (U. S. Title 33, Chapter 18, Section 901 et seq.) as made applicable to certain employments in the District of Columbia by the Act of May 17th, 1928, 45 Stat. 600, Chapter 613, Section 1; D. C. Code (1940) Title 36, Chapter 5, Section 501, which will be referred to hereinafter as the Compensation Act.

This appeal was in the form of a bill of complaint for injunction and other relief against the deputy commissioner filed in the District Court of the United States for the District of Columbia under the provisions of Section 921 (b) of the Compensation Act, hereinafter quoted.

In the bill of complaint filed by the appellees in the lower court it was alleged that the compensation order and award of death benefits filed by the deputy commissioner on April 19th, 1939, was not in accordance with law under the provisions of Section 921 (b) of the Act for the following reasons:

- (1) The findings of the Deputy Commissioner that at the time of the death of Maurice G. Weeks the claimant, Annie Weeks, was living apart from him for justifiable cause, is contrary to the evidence admitted in the record before him at the hearing on February 21st, 1939.

- (2) The finding of the Deputy Commissioner that the said Annie Weeks, who was born on November 5th, 1888, was the legal wife of the employee at the time of his death is not supported by the law and the evidence produced at the hearing before the Deputy Commissioner.

(3) There is no substantial and competent evidence to sustain the aforesaid findings of fact. The record clearly shows that the deceased employee was not living separate and apart from his wife for justifiable cause as that term is used in the Compensation Act. According to the testimony of Annie Weeks he was living separate and apart from her so that he could obtain relief payments from the Public Assistance Division of the Board of Public Welfare of the District of Columbia, notwithstanding these payments extended over a period of several years. That the reasons given by the Deputy Commissioner in his findings of fact as to what he considered a separation for justifiable cause is not supported by the testimony in the case nor are the findings of fact justified by the evidence.

The action of the Deputy Commissioner is arbitrary, capricious, and predicated upon conjecture and sympathy, and is therefore without basis of fact or law. His compensation order is therefore not in accordance with law. (Appellant's App. R. 6, 7.)

The statement of the case by the appellant (page 2 and 3 of appellant's brief) sets forth correctly the procedure followed in the lower court.

It will be noted that the United States Attorney was willing to accept the lower court's decision in this case as he did not appeal from the Order for Summary Judgment and the granting of the permanent injunction signed by Justice Bailey on April 1st, 1941.

The contention made in appellees' bill of complaint for injunction under Section 921 (b) of the Compensation Law, that the marriage between Maurice Weeks and Annie Weeks was not a valid marriage for the reasons set forth in said bill of complaint, is hereby abandoned owing to the decision of this Honorable Court in the case of *Thomas v. Murphy, et al.*, 107 Fed. (2d) 268, 71 App. D. C. 69, decided on October 9th, 1939.

STATUTES INVOLVED.

Act of May 4th, 1927 (44 Stat. 1424; U. S. C. A. Title 22, Chapter 18), Section 902, paragraph 16, which provides as follows:

“The term ‘Widow’ includes only the decedent’s wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time.”

Section 909 (a) and (b) of the Same Act, which provides as follows:

“If an injury causes death, the compensation shall be known as a death benefit, and shall be payable in the amount and to or for the benefit of the persons following:

(a) * * *

(b) If there be a surviving wife or dependent husband and no child of the deceased, to such wife or dependent husband 35 percentum of the average wages of the deceased during widowhood * * *”

Section 921 (a), (b) and (d) of this Same Act, which provides as follows:

(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, and unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the

court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 18.

QUESTIONS INVOLVED.

The questions for the determination of this Court appears to be in substance: Whether the lower court erred in failing to sustain the motions to dismiss the bill of complaint filed by the United States Attorney on behalf of defendant Cardillo, deputy commissioner, and Annie Weeks, appellant; whether the lower court erred in granting appellees' motion for summary judgment and in granting a permanent injunction suspending and setting aside the compensation order and award of death benefits dated April 19th, 1939; whether the lower court erred in failing to grant the motion for summary judgment of the defendant Cardillo and Annie Weeks, appellant, and in failing to enter judgment remanding the case to the deputy commissioner with instructions to make any further or different findings of fact.

SUMMARY OF ARGUMENT.

(a) That the evidence in this case did not support the findings of the deputy commissioner, nor was the deputy commissioner's decision in accordance with law.

(b) That living apart for justifiable cause as used in the Act has a definite legal meaning.

(c) That deputy commissioners' findings will not support an award under the Longshoremen and Harbor Workers' Compensation Act if such findings are assumptions based upon possibilities or conjecture, instead of substantial proof.

(d) That it was not necessary for the Court to remand this case to the Deputy Commissioner under the evidence and pleadings in the case.

ARGUMENT.

(a) The Evidence Did Not Support the Findings of the Deputy Commissioner, Nor Was the Deputy Commissioner's Decision in Accordance With Law.

It is clear from the testimony in this case that Maurice Weeks, the deceased, had not been living with his wife the immediate years preceding his death; that his wife was not dependent on him for support at the time of his death, nor was she living apart for justifiable cause, such as the term "living apart for justifiable cause" is used in the Compensation Act. The deputy commissioner in his findings of fact and award made under date of April 19th, 1939 (appellant's App. R. 9, 10) stated that Annie Weeks and the deceased were married August 8th, 1934; that following the said marriage the deceased and Annie Weeks lived together in the District of Columbia at 507 H Street, N. W., where the latter operated a boarding house, "and that approximately sixteen months following the said marriage the deceased left his wife and moved downtown", and the reason for the separation was his desire to obtain employment

from the Public Relief Bureau and his belief that he would not be eligible for such employment if living with his wife, who conducted a rooming house; that relief was granted him as well as occasional employment; that deceased remained on friendly terms with his wife and they met frequently up to the date of his death and that the deceased contributed to his wife's support whenever he was able to and in such amounts as he was able to afford, and that at the time of his death Annie Weeks was living apart from him for justifiable cause, and was entitled to death benefits. In his findings of fact the Deputy Commissioner made a mistake in stating that Maurice G. Weeks moved downtown from 507 H Street, N. W. He apparently moved downtown from 511 A Street, S. E. according to the evidence. (Appellant's App. R. 10) and (Appellees' App. R. 6.)

Analyzing the Deputy Commissioner's findings of fact and award under the definition of the term "widow" as used under Section 902, paragraph 16 of the Act, it becomes apparent that the deputy commissioner reached the conclusion and which conclusion was the sole basis for his determination, that Annie Weeks and the deceased were living apart for justifiable cause, because he used the wording in his findings of fact "that at the time of the death of the employee Annie Weeks was living apart from him for justifiable cause."

It is clear from the evidence in this case that the deputy commissioner could not have found that decedent's wife was living with or dependent for support upon him at the time of his death, nor could he have found from the evidence that the deceased had deserted his wife Annie Weeks.

The court below was not concerned with trying to find some reason for the justification of the deputy commissioner's action. Once the deputy commissioner made his findings of fact and award the key words which he used in such findings of fact and award are the words which the court was bound to construe when appropriate action was taken in the case under Section 921 of the Compensation

Act for a review of his findings. It is apparent, therefore, that in view of the wording used by the deputy commissioner, the principal question involved in this case was whether Annie Weeks and Maurice Weeks "were living apart for justifiable cause" within the meaning of section 902, paragraph 16 of the Compensation Act.

Analyzing the testimony in this case it is apparent that the lower court had before it a case where Maurice G. Weeks, deceased, lived with Annie Weeks, appellant, from August 8th, 1934 until some time in the Fall of 1935, when he left Annie weeks and went to live with a Mrs. Barry, with whom he boarded prior to his marriage. According to the testimony given by Lucy Barry, Maurice G. Weeks came to her house for a period of four to five months in 1934 or 1935, when he left to get married, and that some time after more than a year had elapsed he came back to room with her and remained as a roomer until the time of his death in June, 1938. Mrs. Barry ran two rooming houses next door to each other at 810 and 812 Eye Street, N. W. Part of the time the deceased lived at 810 Eye Street and the latter part of his stay with Mrs. Barry was at 812 Eye Street, N. W. The testimony given by this landlady (Appellant's App. 43, 44) and (Appellees' App. R. 35, 36, 37) establishes that after the deceased came back to live with Mrs. Barry that he was on relief and that checks came regularly for him (Appellant's App. R. 36); that she charged him \$3.00 a week for rent and that at times she did not charge him because he helped to do little things around her house, such as washing and fixing things. In answer to the deputy commissioner's questions (Appellees' App. R. 37) she stated as follows:

"Q. Well, do you recall any conversation that might have been had between both of you with reference to why they were living apart?

A. Yes, he told me they could not agree.

Q. When did this conversation take place?

A. I could not say exactly but it was some time while he was working for me.

Q. Is that all he said about that?

A. That is all."

Beginning with a period of approximately two years prior to the death of Maurice G. Weeks there was no substantial evidence in the record showing that Maurice G. Weeks had worked for any particular person, earned any particular sum per week, or had given Anne Weeks any set sums of money at stated intervals. If Annie Weeks had been in close contact with her husband, such as she claimed, isn't it reasonable to suppose that she would have known certain places where he worked between 1936 and June, 1938 and the wages that he earned, and if she had received contributions from him wouldn't she have been able to prove these contributions without the prodding that was required on her examination? Her testimony is vague and filled with uncertainties. Excerpts from her testimony establishing this point are as follows:

"Direct examination by Mr. Sheehan:

Q. Mrs. Weeks in the year next preceding his death, I appreciate the fact that you kept no records, but to the best of your knowledge, what was the total amount of money you received from him in the year next preceding his death?

A. Well, I could not give an accurate statement of that.

Q. I appreciate the fact that you cannot give an accurate statement.

A. He gave it to me as he made it, of course, I cannot give the dates he gave it to me, or the amounts. (Appellees App. R. 2)"

"Direct examination by Mr. Sheehan:

Q. Now, between the efforts of yourself and Mr. Weeks at this A Street address within the last year of his life, how much net income did you receive from the house?

A. Well, I haven't any record on that, either. (Appellees' App. R. 3)"

“Cross examination by Mr. McCabe:

Q. Now coming up to 1936, you moved where in 1936?

A. Over to where I am now, 511 A St. S. E.

Q. 511 A St. S. E.

A. Yes.

Q. In November, 1935?

A. Yes, sir.

Q. Now when did he go to live at 810-812 Eye Street, N. W.

A. I do not know the date.

Q. Can't you give the Commissioner an idea as to when he went there? He was your husband, wasn't he?

A. Yes, sir.

Q. Don't you know when your husband left you to go to that address?

A. No, sir, I don't know the date.

By the Deputy Commissioner:

Q. Let me interpose one question here; it is not clear to me, did your husband move with you to 511 A Street, S. E.

A. Yes, sir.

Q. In November, 1935?

A. Yes, sir.

Q. He lived with you there for a while?

A. Yes.

Deputy Commissioner: All right, Mr. McCabe.

By Mr. McCabe: Maybe that will help pick it up; From November of 1935, how long did he live with you down on H.

A. Well, I don't know exactly, because he took this room downtown, as I say for business reasons.

Q. When did he take the room downtown?

A. I don't know the date. (Appellees' app. 5, 6)''

“Cross-examination by Mr. McCabe:

Q. Now in 1937 when he was living at his address at 810 Eye St. N. W., do you remember where he worked in the year, 1937.

A. Well, part of it he was doing mostly job work. (Appellees' app. R. 12)''

Examination by the Deputy Commissioner:

Q. During that year prior to his death, how many times did you visit the place where he lived?

A. He told me not to. (Appellees app. R. 16)"

"Cross-examination by Mr. McCabe:

Q. Now, how many times did you visit your husband at the place where he lived?

A. I just told you that he told me not to come over
* * *."

Examination by the Deputy Commissioner:

Q. You didn't go there; is that the answer?

A. Yes.

"Cross-examination by Mr. McCabe:

Q. You didn't go. Now the year preceding, the year before his death, how many times did you visit him at his place?

A. I do not know exactly but I was there several times.

Q. Did you ever spend the night with him at the place on—

A. (Interposing) Not there, no, sir, but he was at my place several times. * * *

Q. Was it one or two occasions preceding his death? How many times do you estimate Mr. Weeks spent the night with you at your address on 511 A Street?

A. I could not make any statement as to how many times." (Appellees' app. R. 17)

Cross-examination by Mr. McCabe:

Q. Do you know, as a matter of fact, whether his two sons contributed towards his support?

A. No, sir, I don't know anything about it. * * *

Q. Do you know whether they helped their father or not?

A. I do not know that.

Q. Do you know whether or not he went down to live with any of his sons at any time?

A. Yes, he went down to the one that was married one time.

Q. And, when was that, do you know?

A. I don't remember exactly. (Appellees' app. R. 18, 19)

There was no substantial evidence in the record submitted on behalf of Annie Weeks to prove any particular places where the deceased had worked for the years 1936 and 1937 for the purpose of showing that Maurice Weeks had earned any wages in any particular jobs during that period, or proving the salary that he earned. The day he was killed was the first day he worked on that job.

From an examination of the testimony of Annie Weeks (Appellees app. R. 1 to 25) it is clear that she knew very little about her husband for a period of about two and a half years preceding his death. It is clear also that at least two years prior to his death she was living at 511 A Street S. E., in a large house, which she owned, and from which she derived an income of approximately \$90.00 per month from tenants. (Appellees app. R. 14, 15)

There was substantial evidence given by Florence M. Huff, attached to the Public Assistance Bureau of the Board of Public Welfare for the District of Columbia to the effect that in August, 1934 Maurice G. Weeks applied for relief and gave as his address 511 H St. N. W., stating that he was a married man. According to her testimony the relief record showed that they gave relief to him as a single man at that time because he was not supposed to be living with his wife and that beginning on October 20th, 1935 until the time of his death in June, 1938 he received continuous relief from the Public Assistance Bureau of the Board of Public Welfare for the District of Columbia (Appellees' app. R. 29 to 35).

The record shows that when they were investigating Maurice Weeks' case Mr. Weeks made a statement that "he has not seen nor heard from his wife for about seven months". Their investigation showed that her name was Margaret Weeks. On his 1934 application blank for relief it was given as Annie Rose and in another place as Herbert. Their

record also showed that Maurice G. Weeks was living at 810 Eye Street N. W., on December 17th, 1935 because Mr. Weeks called at the District office regarding his check which, through a typographical error, was sent to another address instead of 810 Eye Street N. W. The following is an excerpt from the testimony given by Miss Huff:

“Q. Now, beginning with 1936 and running through until the time he died in 1938, did you have anything to show as to whether he was living separate and apart from his wife, statements made by him?

A. We sent out a form in June, 1938 which all recipients of relief have to sign and he said: “I have nobody but myself and I am not able to work”.

Q. When was that signed? June, 1938?

A. We mailed the letter on June 2nd, 1938.” (Appellees’ app. R. 34)

Summing up Miss Huff’s testimony it is clear that beginning with the latter part of 1935 and continuing straight through until his death Maurice Weeks received continuous weekly relief from the Public Assistance Bureau of the Board of Public Health for the District of Columbia and that he signed the form for the Public Assistance Bureau in June, 1938, setting forth that he was not able to work and he had nobody to take care of.

It is my contention in this case that a review of the testimony will show that Annie Weeks were so indefinite in her testimony as to when Maurice Weeks left her and started to live at 810 Eye Street N. W., as to the reason for their separation, the amounts of money, if any, given by Maurice Weeks to her for a period of two years preceding his death, the places where he worked, or the amounts earned, that her testimony is of little value, particularly when it is read in connection with the evidence given from the relief records as testified to by Miss Huff, and the testimony of Lucy Barry, the landlady of Maurice G. Weeks.

The statement signed by Annie Weeks and made an exhibit in the testimony (Appellees’ app. R. 38), sets forth the

fact that ever since her alleged marriage to Maurice G. Weeks he had not been able to support her and that as a matter of fact she had been giving him money ever since their marriage. She attempted to correct this statement in her testimony and explained its inconsistencies with her testimony on the ground of sudden grief, but the Court's attention is called to a case hereinafter cited, namely, *Zuvicsh v. Schnyder*, 137 Southern Reporter, 379, which suggests the rule of law to be followed by the Courts where statements of this nature are made.

The statement signed by Irving L. and Maurice O. Weeks (Appellees' app. R. 39) should be given serious consideration in connection with the contention made in this case. It is clear from this statement that Maurice G. Weeks was separated from his wife at the time of his death and that he had not helped to contribute to the support of Annie Weeks for a period of two years preceding his death.

Regarding the signed statement made by a claimant in a compensation case which differs from the testimony given at a hearing on the case, the Court's attention is invited to the case of *Zuvicsh v. Schnyder*, 137 Southern Reporter 379, 18 La. Appeals 121, decided by the Court of Appeals of Louisiana on November 3rd, 1931. In this case the Court held that a widow's sworn statement at a compensation hearing, given at an unsuspicious time, outweighs the conflicting testimony given by her at the trial to recover compensation for her husband's death.

In this case the widow, two days after her husband's death, made an affidavit to the effect that for some time she and her husband had been separated, during which time she had not seen him, although she knew where he was living, and that he had not contributed to her support, and that she never requested him to contribute to her support or that of her son. The Court called attention to the fact that her testimony at the trial to recover compensation for his death was utterly conflicting with the statements contained in the affidavit.

Paragraph K of Subsection 2 of Section 8 of Act 242 of 1928, amending Act 20 of 1914, Louisiana Compensation Law, provided as follows:

“No compensation shall be payable under this section to a widow unless she be living with her deceased husband at the time of the injury or death, or be then actually dependent upon him for support”.

Paragraphs A and B of Subsection 2 of Section 8 of Act 242 of 1928 for the same state provided as follows:

“(a) The following persons shall be conclusively presumed to be wholly and actually dependent upon deceased employee:

(b) A wife upon a husband with whom she is living at the time of his accident or death.”

In this case the widow and her mother testified that the plaintiff and her husband had been separated on account of a series of quarrels during November, 1929 and that he was living on one street and she resided with her mother on another street and that it was their intention to effect a reconciliation in the near future. The widow stated that during the period of separation her husband contributed \$8.00 per week or so much as he could afford, and the mother stated that her daughter's husband paid her board. The wife also testified that she co-habited with her husband two weeks previous to the accident. On cross-examination, when confronted with her sworn statement made two days after her husband's death, the widow only admitted that part of this statement was true. The Court in sustaining the judgment entered in the lower court disallowing the claim called attention to the fact that their decision in this case was the same as their decision in a somewhat similar case of *Milton v. Long-Bell Lumber Co.*, 165 La. 336, 115 So. 382, and said

“We believe that this case is decisive of the issue presented because in both cases the parties voluntarily choose to reside separate and apart, the husband's visits were only casual, and the separation was in fact a

physical one, and the wife was working and supporting herself without any assistance from her husband.”

The Court also said in this case:

“The only excuse plaintiff gives for having signed this statement contrary to her testimony is that it was made only two days after her husband’s death and that she was grief-stricken * * * we therefore conclude that the statement given, at an unsuspecting time, by plaintiff, outweighs her testimony given at the trial * * *”

It would appear that the issues in the instant case could be narrowed down roughly to the following questions:

FIRST: that even if Annie Weeks and Maurice G. Weeks mutually agreed to live separate and apart for a period of at least two years or over preceding his death on the flimsy excuse that could get work down town—which he apparently never obtained—was such a separation within the meaning of the term “living apart for justifiable cause”.

SECOND: if Annie Weeks and Maurice G. Weeks mutually agreed to live separate and apart for a period of at least two years or over preceding his death for the purpose of committing a fraud upon the Relief Agencies of the District of Columbia so that he could claim that he was not supporting his wife, could such a separation be described as “living apart for justifiable cause” within the meaning of that term as used in this and other compensation acts.

(b) That Living Apart for Justifiable Cause as Used in the Act Has a Definite Legal Meaning.

One of the leading cases involving the definition of the term “living apart for justifiable cause” is that of *In Re Newman’s Case*, 222 Mass. 563, 111 N. E. 359, in which the Court said:

“If the wife lives apart from her husband by mutual consent, she is not living apart from him for justifiable cause * * *”

This was a case decided by the Supreme Judicial Court of Massachusetts and involved the interpretation of the term “living apart for justifiable cause” as this term was used in the Massachusetts Compensation Act, in an action brought by the widow of a deceased workman. The following is quoted from the Court’s decision:

“These words have acquired a peculiar and appropriate meaning under the Law. We are therefore bound to construe them in accordance with such meaning * * * where a woman lives apart from her husband and it is contended that such separation is for justifiable cause, ordinarily it must appear that such living apart is due to some failure of duty or mis-conduct on the part of the husband, but this classification does not exclude cases of living apart because of physical or mental infirmities of either or both husband and wife. If the wife lives apart from her husband by mutual consent, she is not living apart from him for justifiable cause, and she is not entitled to a divorce upon the ground of desertion. Citing: *Lea vs. Lea*, 8 Allen, 418.”

“A desertion consented to is not a desertion.” Citing: *Ford vs. Ford*, 143 Mass. 577.”

“So in cases brought against a husband for support furnished his wife, if she is living apart from him for a justifiable cause, or with his consent, he is liable, but unless he consented to her living apart from him, and in the absence of mis-conduct on his part toward her, she is not justified in leaving her husband’s house and demanding support on his credit elsewhere.”

“If we assume that when the deceased and his wife separated several years ago by mutual consent and that such separation was justifiable at that time because he was not earning enough to support his family, it also appears that at the time of his death his earnings had nearly doubled, and she still continued to live away from him by mutual agreement. As the words in question have a well settled and fixed meaning under the

Law and as it is our duty in interpreting them to give that meaning, it must be held upon the facts as disclosed by the evidence in this case, that the wife of the deceased was not living apart from her husband for justifiable cause, and there was no evidence to warrant such a finding."

The above mentioned case involved a husband and wife who had broken up housekeeping several years prior to his death. He had worked outside the City and she had at times worked at various places for her own support, although he had at times contributed thereto and they had spent week-ends together occasionally. The question was whether they were living together so as to entitle the wife to compensation for his wrongful death under the Workmen's Compensation Act under the presumption that a wife living with her husband is dependent upon him under the State Statute.

It was held in the case of *Reynolds v. Reynolds*, 68 W. Va. 15, 69 S. E. 381, that "Justifiable cause" which will excuse a husband or wife for leaving the other must be such as could be made the foundation of a divorce from bed and board, and of a nature inconsistent with the marital relation, or such as would render co-habitation unsafe.

In the case of *Olsen v. Dahlin Jones Electric Company* (1934), 190 Minn. 426, 252 N. W. 78, it was held that the testimony of claimant wife—later denied by her—that the separation between her and the deceased was due to domestic difficulties, was held sufficient to support a finding that claimant was "voluntarily living apart from her husband" so as to preclude an award to her as a dependent particularly in the absence of deceased's mis-conduct or unwillingness to support her.

It is interesting in connection with the facts as developed in the testimony in this case to call attention to the fact that under the English Compensation Act, the question of a wife's dependency is one of fact and bears no relation to the husband's legal obligation to support her. This was decided in the case of *Peters v. Overhead*, (1934) 27 B. W.

C. C. (Eng.) 190-C. A. wherein it was held that "where deceased deserted his wife years before the accident, and that she had since been supported by the "Poor Law Authorities," she was not entitled to compensation as his dependent.

Justifiable cause has a fairly exact meaning as used in compensation cases. The following case may throw some light on the Courts' interpretation of these words:—A wife living apart from her husband because of his insistence on excessive marital indulgences, ruining her health, was held entitled to compensation for his death as a dependent, his conduct being extreme cruelty, constituted justifiable cause within the Workmen's Compensation Act of Michigan. *Martilla v. Quincy Mining Company*, 221 Mich. 528, 191 N. W. 193.

In *Albee's* case, 128 Maine 126, 145 A. 742, decided by the Supreme Judicial Court of Maine on April 22, 1939, it was held that a finding of the Commissioner that widow claiming compensation for death of her husband was not wholly dependent for support on her husband within the Workmen's Compensation Act of Maine, because her living apart from him was without justifiable cause, and that the separation was begun with the wife's consent and continued with her consent to the time of the accident, was held sustained under the evidence.

In defining the meaning of the words "justifiable cause," the Court said:

"Justifiable cause which will excuse a wife for living apart from her husband ordinarily involves on the part of the husband with respect to the wife, and to her knowledge, conduct inconsistent with the marital relation; not necessarily misconduct or ill treatment of such a character as might entitle her to a divorce from the bonds of matrimony, but such, for instance as could be made, without turning the same length of time, the foundation for a judicial separation. * * * A wife does not live apart from her husband for justifiable cause if he is not recreant to marital duty." *Newman's case*, 222 Mass. 563.

In this case the Court had under consideration an appeal from a proceeding begun by the widow of a deceased employee who had filed a claim under the Workmen's Compensation Act and who had appealed from a decree denying compensation to the widow, and the section which was under consideration in the case under the Maine Compensation Act, provided:

"A wife (shall be conclusively presumed to be wholly dependent for support) upon the husband * * * from whom she was living apart for a justifiable cause, or because he had deserted her."

"The Court had under consideration, first, whether she was living apart for a justifiable cause, and second, whether the husband had deserted her."

The Court held that in view of the evidence surrounding the separation there was no justifiable cause and there was no desertion. Citing: *Freeman v. Freeman*, 82 N. J. Equity 360.

In the case of *Williams v. Lawson, Deputy Commissioner*, 35 Fed. (2d) 346, decided by the Circuit Court of Appeals for the Fifth Circuit on October 26, 1939, it was held that the wife of a deceased stevedore under the Longshoremens & Harbor Workers' Compensation Act, who at the time of his death was not living with him or dependent upon him for support, or living apart for justifiable cause or by reason of his desertion, was not entitled to compensation for his death under the above mentioned Act, since her condition at that time was not that of a widow as defined under section 902 of said Act. In this case the claimant was married to the deceased employee in September 1917. They lived together until some time in 1922 or 1923 when they separated, the deceased leaving appellant for justifiable cause. In 1923 appellant married Henry Coleman and they lived together as man and wife for about two years. At the time of the death of Isaac Williams, the longshoreman involved in this case, the appellant was not living with him or dependent for support on him and was not living

apart for justifiable cause, or by reason of his desertion at such time. In this case the Court said:

“* * * We are of opinion that the above set out provisions of the Act show that a right to the prescribed compensation was not intended to be conferred on one who was the wife of a deceased employee at the time of his death, but, who at that time was not living with him nor dependent on him for support, or living apart for justifiable cause or by reason of his desertion at such time.”

The Appellate Court sustained the Court below in disallowing the claim asserted by the widow.

(c) Deputy Commissioners' Findings Will Not Support Any Award Under the Longshoremen and Harbor Workers' Compensation Act, if Such Findings Are Assumptions Based Upon Possibilities or Conjecture Instead of Substantial Proof.

In the case of *Pate Stevedoring Company et al. v. Henderson*, 44 Fed. Supp. 12, decided April 2nd, 1942, *U. S. District Court*, Judge McDuffy reversed a decision of Deputy Commissioner Henderson involving an award of compensation made by the Deputy Commissioner. In this case Judge McDuffy cites numerous Federal cases regarding the powers of deputy commissioners in compensation cases, and also cites numerous cases, including several from this Court, wherein deputy commissioners have been reversed because their decisions were not in accordance with law, namely, *New Amsterdam Casualty Company v. Hoage*, 60 App. D. C. 40, 46 Fed. (2d) 837; *Liberty Mutual Insurance Company v. Hoage*, 62 App. D. C. 189, 65 Fed. (2d) 822; *Hoage v. Liberty Mutual Insurance Company*, 64 App. D. C. 395, 78 Fed. (2d) 874.

The Court also stated that if a deputy commissioner ignores proper evidence presented, it is an error of law and if prejudice resulted his order was not in accordance with law

and the court will give relief. Citing: *Grant v. Marshall*, 56 Fed. (2d) 654.

In this case Judge McDuffy, in reversing the Deputy Commissioner, said:

“If the evidence heard by the deputy commissioner was not of a competent and substantial character, or if it was such that the commissioner entered the field of speculation and conjecture in finding facts, the award must be set aside.”

Further on in his decision the court said:

“The fact finder should try with an open mind to consider all of the doctor’s testimony, and should not cast aside or wholly disregard that testimony of a positive nature given by the doctor, and accept only that part or which at best is in substance and effect, that there is a possibility that the work done by Hall materially aggravated his heart condition and caused his death.”

(d) That it Was Not Necessary for the Court to Remand this Case to the Deputy Commissioner Under the Evidence and Pleadings in the Case.

Appellant has cited the case of *Ford Motor Company v. National Labor Relations Board*, 305 U. S. 364, 59 S. C. Rep. 301, as an authority that the U. S. District Court should have remanded this case to the deputy commissioner in accordance with the request contained in the answer filed by the appellant to the bill of complaint filed by the appellees. The National Labor Relations Act, 29 U. S. C. A. Sec. 160 (e) provides as follows regarding appeals taken from findings and orders of the National Labor Relations Board:

“Upon such filing (of the transcript) the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings set forth in such transcript a decree enforcing, modifying

and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board as to the facts, if supported by evidence shall be conclusive. If either party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent or agency, the court may order such additional evidence to be taken before the Board, its member, agent or agency and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review * * *."

There is no such provision in the Longshoremen and Harbor Workers' Compensation Act. Section 921 (a), (b) and (d) of the Compensation Act, previously quoted in this brief, clearly sets forth the practice to be followed when appealing from decisions of the deputy commissioner.

The Supreme Court of the United States calls attention to the fact that the Board may make application for a remanding for the purpose of setting aside its findings and order of December 22nd, 1937 and issuing proposed findings and making its decision and order upon consideration of the entire case. It is interesting to note also in this case that the Supreme Court in discussing the jurisdiction of the lower court with regard to suits filed before that court involving the orders of the Board said:

"First, the authority conferred upon the Board by Section 10 (d) of the National Labor Relations Act, 29 U. S. C. A. Sec. 160 (e) to modify or set aside its findings and order, ended with the filing in Court of the transcript of record."

It is our contention in this case that once suit has been filed under Section 921 (b) of the Compensation Act within the required time, that the United States District Court has complete jurisdiction of the case and if the compensation order of the deputy commissioner was not in accordance with law, and the evidence does not support the award that an award can be set aside in whole or in part and does not have to be remanded to the deputy commissioner, even if the deputy commissioner requests that the case be remanded to him. The action is entirely within the discretion of the United States District Court.

It is apparent that Section 922 of the Longshoremen and Harbor Workers' Compensation Act, quoted on page 10 of appellant's brief does not apply to the present case.

It is our contention that Section 922 only applies to those cases on which appeals have not been taken from the deputy commissioner's award under Section 921 (b) of the Act. If appellant's argument was sound on this point the deputy commissioner might review a compensation case and issue a new compensation order even though suit for injunction was filed in the District Court of the United States for the District of Columbia under Section 921 (b) of the Act.

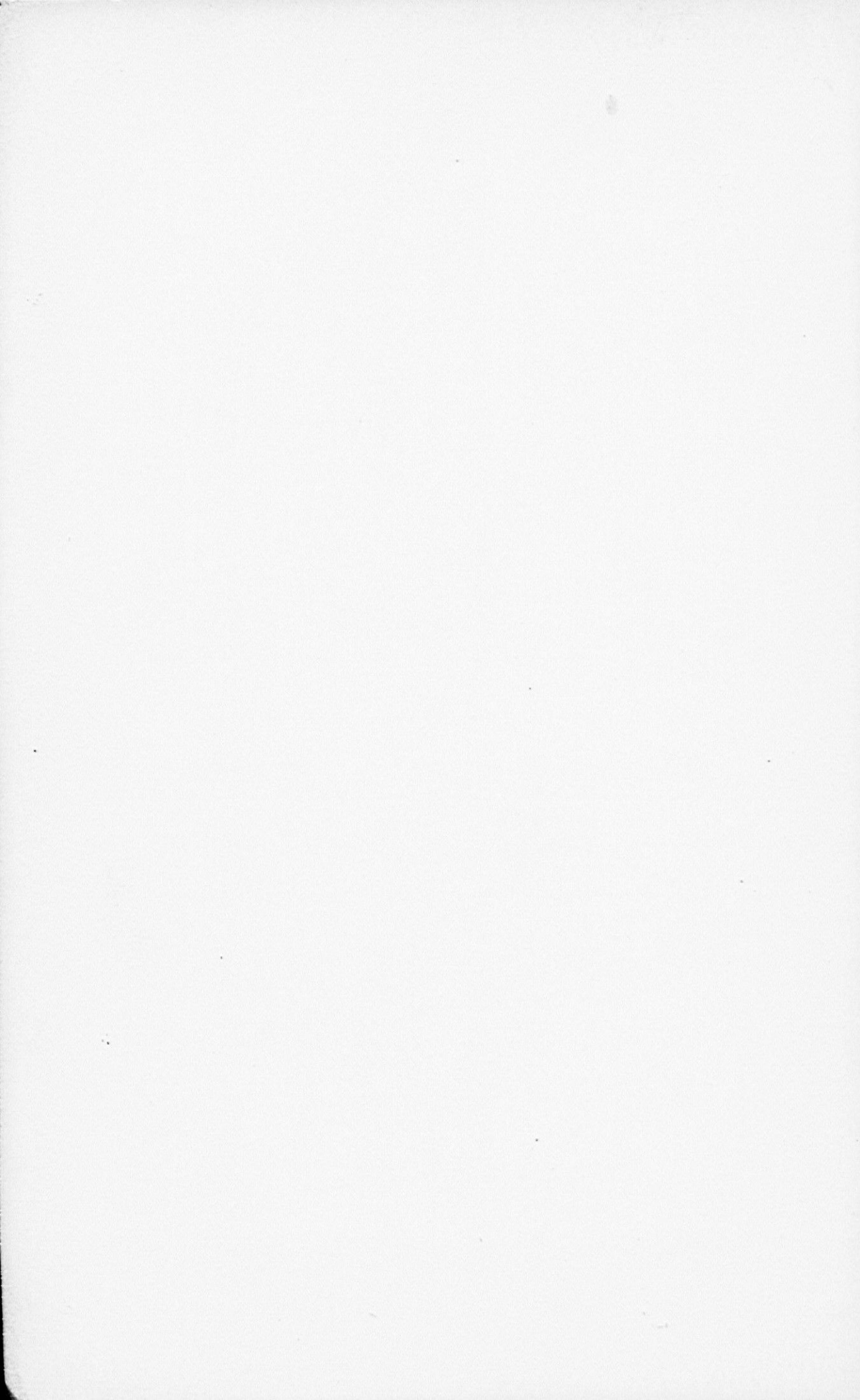
CONCLUSION.

It is earnestly contended that from a reading of all of the testimony in this case and the exhibits, and based upon the decisions of the different courts, it is clear that the findings of fact made by the Deputy Commissioner Cardillo to the effect that at the time of the death of the employee, Annie Weeks was living apart from him for justifiable cause, was not supported by the law or the facts in this case.

It is respectfully contended that the findings of fact and conclusions of law made by Justice Bailey of the lower court in this case, and his order for summary judgment, and granting permanent injunction against the deputy commissioner, should be affirmed.

JAMES E. McCABE,
*Attorney for Rudolph B.
Behrend, et al., Appellees.*

APPENDIX



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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8319

ANNIE WEEKS, *Appellant*,

v.

RUDOLPH B. BEHREND, ET AL., *Appellee*.

APPENDIX TO BRIEF FOR APPELLEE.

**EXCERPTS FROM TESTIMONY AND PROCEEDINGS
DESIGNATED BY APPELLEE.**

* * * * *
59 **Annie Weeks**

* * * * *
Direct Examination

* * * * *

61 Q. Did there come a time afterward when you and
Mr. Weeks moved from that address to a different
address? A. Well, there are a few things that should be
gone into previous, because in February I was taken ill,
you have a record of that, and I was ordered to go to a
specialist for my nose and ears, and I couldn't afford to go

to a specialist because at that time I was renting to relief occupants and couldn't get my rent, and I had to go to the ear, nose, and throat clinic.

By the Deputy Commissioner:

Q. You are speaking about February, 1937? A.
62 1935.

Q. 1935? A. Yes.

* * * * *

67 By Mr. Sheehan:

Q. Mrs. Weeks, in the year next preceding his death, I appreciate the fact that you kept no records, but to the best of your knowledge what was the total amount of money you received from him in the year next preceding his death? A. Well, I couldn't give an accurate statement on that.

Q. I appreciate the fact that you can't give an accurate statement. A. He gave it to me as he made it and, of course, I can't give the dates he gave it to me, or the amounts.

68 Q. I appreciate that also, but can't you give the Commissioner your best estimate of the total amount you received in the year next preceding his death? Just think a moment. A. I don't see how I can since it was given in small amounts at the time he earned it and no records kept because, of course, we had to use it right up to eat. I had no way of keeping it or no way of putting it anywhere where I could have access to it because we were compelled to use it right up.

Q. Now, you mentioned that at one time he gave you \$43, and that was the largest amount that you received from him at any one time? A. One time.

Q. In the year next preceding his death? A. Yes.

Q. Can you recall the next largest amount that you received from him at any one time? A. \$23 was the next largest, and the others ran from, I would say, \$5 up according to the job, because sometimes he would have two days, sometimes three days, and sometimes only one day.

* * * * *

71 Q. During what period of time did you have treatment at Providence? A. It was after I moved; you have it all.

Q. Yes, but I am asking you if you can recall without referring to any memorandum. A. It was in January, I think, of 19—

Q. (Interposing) January of 1936? A. You see, I moved in November.

Q. Will you look at that and see if that will enable you to tell the date? A. This is January 6, 1936.

72 By the Deputy Commissioner:

Q. What are you referring to, Mrs. Weeks? A. My disability after, right after I moved.

Q. What are you looking at now, what card is that? Tell us about it. A. Dispensary at Providence Hospital.

By Mr. Sheehan:

Q. A card furnished by the Dispensary at Providence Hospital? A. Yes.

Q. January of 1936— A. (Interposing) I think I had two of these cards because I went there, I think, about three months all together; I am not positive, but it was somewhere in there.

Q. Approximately how long were you disabled after January of 1936? A. Well, it seems to me that I was taken before Christmas and it was about two or three months all together that I had my arm treated; in fact, I was treated medically and my arm also.

Q. Now, between the efforts of yourself and Mr. Weeks at this A Street address within the last year of his life, how much net income did you receive from the house? A. Well, I haven't any record on that, either.

Q. Did you have any money left over? A. No, sir,
73 I had to spend it on the house.

Q. And you had saved money from other days? A. Well, no, I spent it as I took it in.

Mr. Sheehan: I think that is all.

The Witness: And it now has to have a good deal more spent on it if I am going to stay in it.

By Mr. Sheehan:

Q. By the way, I think after Mr. Weeks died and before he was buried there was a man came to the house; is that correct? A. Yes, sir.

Q. And did you have any conversation with him about the funeral arrangements? A. Not at the house.

Q. Well, where was it?

Mr. McCabe: There is no contention about the funeral bill in this case.

By Mr. Sheehan:

Q. But did you sign some sort of statement? A. Yes, I signed something.

Mr. McCabe: Wait, I object to that. I just got this statement and I object until I cross-examine on it.

Mr. Sheehan: Well, that's all right. That is all.

The Deputy Commissioner: You may inquire.

Cross-Examination

By Mr. McCabe:

74 Q. Mrs. Weeks, at the time you married Mr. Weeks in Alexandria, Virginia, you stated you were living in Washington, D. C.? A. Yes sir.

Q. Did you know that the three wives your husband had had obtained a divorce from him in the District of Columbia? A. No, sir, absolutely not.

Q. Did you know that he was forbidden under the District law to remarry? A. No, sir.

Q. In the District of Columbia? A. No, sir.

Q. Why did you go to Alexandria, Virginia, for the purpose of getting married? A. Well, for the same reason I went to Maryland the first time, I guess.

Q. That doesn't answer the question. A. I didn't want notoriety, having statements made, having roomers in the

house; I wanted it done quietly. That is the only reason I had.

Q. You both lived in the District of Columbia at that time, didn't you? A. Yes.

Q. And then after you were married in Alexandria, Virginia, you came back to the District of Columbia to live?

The Deputy Commissioner: Answer out loud so
75 the Reporter can hear you.

The Witness: Yes.

By Mr. McCabe:

Q. Now, you stated on your direct examination that when you came back to the District of Columbia that you were running a rooming house and that you rented rooms, and that Mr. Weeks assisted you, tending the fires, cleaning the house, assisting you? A. Yes.

Q. You were married on what date? A. August 8, 1934.

Q. August 8, 1934; now, how long did Mr. Weeks continue to clean the house and tend the fires and help you in running your rooming house after August 8, 1934? A. Well, he was only there—yes, sir, he was quite a while, all the time probably.

Q. When did it cease? A. Except when he was working.

Q. When did you move from that place? A. In November, 1935.

Q. In November, 1935? A. Yes.

Q. So between August 8, 1934, and November, 1935, he assisted you in running that rooming house? A. Yes,
76 not all of the time, part of the time.

Q. Just part of the time? A. Yes.

Q. Now, coming up to 1936, you moved where in 1936? A. Over to where I am now, 511 A, Southeast.

Q. 511 A, Southeast? A. Yes.

Q. In November, 1935? A. Yes, sir.

Q. Now, when did he go to live at 810—812 Eye Street?
A. I don't know the date.

Q. Can't you give the Commissioner an idea as to when he went there? He was your husband, wasn't he? A. Yes, sir.

Q. Don't you know when your husband left you to go to that address? A. No, sir, I don't know the date.

By the Deputy Commissioner:

Q. Let me interpose one question here; it isn't clear to me, did your husband move with you to 511 A Street, Southeast? A. Yes, sir.

Q. In November, 1935? A. Yes, sir.

Q. He lived with you there for a while? A. Yes.

77 The Deputy Commissioner: All right.

By Mr. McCabe:

Q. Maybe that will help pick it up; from November of 1935 how long did he live with you down on H? A. Well, I don't know exactly, because he took this room downtown, as I say, for business reasons.

Q. When did he take the room downtown? A. I don't know the date.

Q. And yet you mean to tell the Commissioner that you were married to this man and living with him as husband and wife and you don't know when he left your place and took a room downtown? A. I don't know the date, because —because there was no incident about anything that would make me think of it.

Q. Well, was he living down there two years prior to his death? A. I don't know that, it was around that time, but I don't know the exact time, no, sir.

Q. You say it was around two years prior? A. Yes, sir, we were back and forth with each other and there was no record kept of that because that was immaterial to he and I and I didn't think it was of any interest to anybody else.

Q. Do you know the lady from whom he rented the room?

A. No, I met her.

78 Q. What is her name? A. I don't remember her name either, exactly; I heard it several times; I heard it because I met her in his room.

Q. Was it Lucy Barry? A. I believe it was, because she opened the door one day and came in without knocking and, of course, I saw her.

Q. You say you visited your husband downtown about every two weeks? A. I wouldn't say at the house every two weeks.

Q. A year prior to your husband's death how often did you visit your husband downtown at Mrs. Barry's place? A. I wouldn't say it was at that place because he met me at the car at Ninth and F or came up to the house.

Q. How far away was it where you lived from where he was living for a year prior to his death?

Mr. Sheehan: I object to that.

The Witness: You have the address.

Mr. Sheehan: I think everybody knows from 511 A, Southeast, to 810 Eye, Northwest, is about two miles.

The Deputy Commissioner: Don't you see we are wasting more time by arguing about it than by testifying to the fact?

By the Deputy Commissioner:

Q. Do you know how far it is? A. No, sir, I don't know exactly how far.

By Mr. McCabe:

79 Q. Could you estimate how far? A. I wouldn't know how to do that, I am not an engineer.

Q. During that time preceding his death you were living at 511 A Street, Southeast? A. Yes, sir.

Q. And he was living at 810—812 Eye Street; isn't that right? A. Yes, part of the time, but he had clothes up at my house; he was up to my house part of the time.

Q. Did you ever give a statement to Mr. Vincent under date of June 23, 1938? A. I remember something about it but not very much.

Q. I show you this statement—

Mr. Sheehan (interposing): May I see it?

The Witness: Mr. Commissioner, there is one statement I would like to make—

The Deputy Commissioner (interposing): Just a minute.

Mr. Sheehan: There is no question.

By Mr. McCabe:

Q. Would you look at this statement, please? I am showing the witness a statement dated Washington, D. C., June 23, 1938.

Mr. Sheehan: Mr. McCabe, may I ask at this time if this is Mr. Vincent (indicating)?

Mr. McCabe: No.

80 Mr. Sheehan: The gentlemen who secured that statement, is he available?

Mr. McCabe: No; I would have had him here if he was, but he is in Omaha, Nebraska.

Mr. Sheehan: Well, has this witness had any contact with Mrs. Weeks?

Mr. McCabe: No.

The Witness: This word (indicating). I was under the impression it said "fully." It don't state, but I was under the impression it said "fully."

By Mr. McCabe:

Q. Do you mean that part of the statement, "Ever since my marriage to Maurice Weeks he has not been able to support me," you think the word "fully" should be there?

A. "Fully." I was under the impression it was there, yes. What is that supposed to be?

Q. "Laid him up." A. This is wrong, too, "ever since." Now, at that time I don't remember what was being done, because, of course, naturally I was thinking of my husband being buried first of all, and this "ever since" they knew positively that that wasn't so because I wasn't living at that address.

By the Deputy Commissioner:

Q. What is the statement you are referring to? A.
"Ever since."

81 Q. Ever since what? A. Ever since I had been married I had been running a rooming house at 507 H Street, which wasn't true, and, being in the state of mind I was in—I should have caught it but I didn't, but he knew it wasn't true.

Q. You say that was incorrect? A. Yes.

By Mr. McCabe:

Q. You say this is your signature, though, isn't it? A. Yes, because I only lived there about a year and, of course, I should have caught it, but being in the state of mind I was in I didn't, or I wouldn't have signed it.

Q. Then, besides that statement about ever since then I have been running a rooming house, is everything else correct? A. No, because that "fully"—

Mr. Sheehan (interposing): Take your time.

The Witness: That we had been living together as man and wife, well, he asked me that when he wrote it down and I said certainly we were living together as man and wife; simply because he had a place for business reasons doesn't alter the fact that we were man and wife, does it? That has nothing to do with that, does it.

The Deputy Commissioner: Mrs. Weeks, the question is, Is there anything else wrong with that statement.

Mr. Sheehan: Read the statement through carefully.

82 The Witness: This first sentence about the support, that should have been "fully."

The Deputy Commissioner: You mentioned that already.

The Witness: And this reference he makes here to my helping him; naturally, after he got hurt I had to do my part as his wife until he got his compensation; that covers that part where he says I assisted him. I was his wife; he was laid up.

The Deputy Commissioner: That is true, then, that you did help him?

The Witness: Certainly; he stayed at my place. We had to have something to eat.

By the Deputy Commissioner:

Q. Just a minute. Listen to the question: Is there anything wrong in that statement? A. It is wrong in that way, only that he didn't give the reasons for it.

Q. Is it wrong or right, did you help him, or didn't you? A. I had to.

Q. All right, then it is right, and you want to give your reasons for it; is that right? A. He was living with me as my husband and I was his wife, and what else was I to do?

Mr. Sheehan: That's all right.

The Witness: But this gentleman makes reference that we were living together as man and wife, while the reason I signed the statement so there was because we were man and wife, though not always living at the same address. That is right here.

By Mr. McCabe:

Q. Then, outside of those things you have just said, that statement is right; is that right? A. Well, this statement says—I didn't read this correctly; it says, "Ever since we were married I have been running a rooming house at 507 H St., Northwest," but I didn't catch that "but in 1936 I was forced to give this up due to sickness."

By the Deputy Commissioner:

Q. Is that correct or incorrect? A. Yes, sir, that is right.

By Mr. McCabe:

Q. And that is the last paragraph you objected to, but you didn't see that word "but"? A. Yes, sir.

Q. So that that last paragraph now you say is correct? A. Yes, sir, it would be correct, although—yes, sir, that

would be correct, because that was a large house, and I wouldn't have had it unless I could have rented rooms.

Mr. McCabe: I offer this in evidence as the Carrier's next exhibit for whatever it may be worth.

The Deputy Commissioner: All right, received in
84 evidence as Carrier's Exhibit No. 5.

(Thereupon the statement in question was received in evidence and was marked by the Reporter "Carrier's Exhibit No. 5," and is filed in the office of the Deputy Commissioner with the other papers in this case.)

By Mr. McCabe:

Q. Do you know when he applied for work on the Government project whether anybody came around and asked you whether or not you were Mrs. Weeks? A. Yes, sir—well, she didn't ask me exactly.

Q. What did she ask you? A. She came in to see some other people I had, because I had other people there, and she asked me if he was in and I said I didn't know, "if he is in he is in his room, and you can go up and see."

Q. This was at 507 H Street? A. Yes.

The Deputy Commissioner: Are there two different places, 507 H and 511 A?

Mr. Sheehan: 507 H was this large rooming house, and in November, 1935, she moved to 511 A.

The Witness: Southeast.

Mr. Sheehan: Now, where this relief worker came was to 507 H Street, or A?

The Witness: H.

85 The Deputy Commissioner: H?

By Mr. McCabe:

Q. Now, that was prior to November, 1935? A. Yes.

Q. Now, did this relief worker, did this worker that was checking your husband at that time who had applied for compensation, did the relief worker question you as to whether or not you were married to Mr. Weeks? A. Well,

she came back to where I was standing in the back of the hall and said she heard we were married, I think that is the way, I won't be positive, but I think that is the way she put it, that she had heard we were married, and I said "It is peculiar to me that people know more about my business than I do."

That is the answer I made, as far as I can remember; so when she went out the hall, that is the way I remember, and when she went out she said, "You know, if you are, he isn't eligible for this work."

Q. Is that all the conversation you had with any case worker for the relief? A. Yes.

Q. Now, coming up to 1937—

Mr. Sheehan (interposing): Now, Mr. McCabe, did your question refer to relief for others or for Weeks?

Mr. McCabe: No, I understood he had applied
86 for relief, it is for Mr. Weeks; I think she understands.

By Mr. McCabe:

Q. Now, in 1937, when he was living at his address at 810 Eye Street, Northwest, do you remember where he worked in the year 1937? A. Well, part of it he was doing mostly job work.

Q. When was he injured at Greenbelt? A. '36.

Q. 1936? A. Yes.

Q. How long was he laid up as a result of that injury? A. Well, he didn't do any work at all for some time, but he did job work after that, but he never completely recovered from it.

Q. How many weeks' compensation did he get as a result of the injury at Greenbelt? A. I don't know that; that was continued.

Q. You say you went down to help him put down his claim for compensation; who did he get it from? A. That compensation that used to be on Seventh Street.

Q. The United States Employees' Compensation Commission? A. Yes.

Q. And he was working as a Government employee? A. Yes.

By the Deputy Commissioner:

87 Q. As a Government employee? A. Yes.

By Mr. McCabe:

Q. And you don't know how long he got this compensation? A. I understood that continued all the time.

Q. Up to when? A. Until he died, that was my impression about that.

Q. You were under the impression he got it up until he died? A. Yes, sir; he told me it was only \$25.

Mr. McCabe: Are you willing to give me a record of the United States Employees' Compensation showing injury to Mr. Maurice Weeks in 1936 at Greenbelt?

Mr. Sheehan: Yes, I will get that whole record and put it in.

I contended all the time that that should be put in.

By Mr. McCabe:

Q. Now, getting into the year 1937 while he was living at this address 810 Eye Street, Northwest, you said on direct examination you didn't know just how much he gave you during those years? A. No, that would be impossible unless I kept a record of it; when you get \$5 and have to go out and buy something to eat with it—

Mr. Sheehan (interposing): Just answer the question.

88 By Mr. McCabe:

Q. In 1937 what business were you in? A. Running part of the house I lived in; I am not in any business.

Q. In 1937 how did you maintain a living? A. I rented part of my house to feed and clothe myself.

Q. How many rooms have you? A. Seven.

Q. How many rooms are necessary for you to live in? A. I have two.

Q. How many rooms do you rent? A. Five.

Q. Do you furnish board, too? A. No.

Q. What did you charge for those rooms? A. They are rented two together, and I get six and a half or eight dollars according to how many are in them.

Q. Let's take each tenant you have there; you are talking now about the year prior to your husband's death? A. Yes.

Q. At 511 A Street? A. At 511 A Street, yes.

Q. Now, you say there are five rooms, and what is the cheapest room you rent there, what do you get for it? A.

Well, they are rented together.

89 Q. Two rooms together? A. Yes, sir.

Q. What do you get for those two rooms? A. Six and a half, seven and a half, eight, according to how many people is in them, but I don't get it, the same as I did on H Street.

Q. You stated you were renting these rooms. Have you made these into apartments? A. Well, they are rented as housekeeping rooms, yes.

Q. How many families have you that are renting them from you?

Mr. Sheehan: We are talking now about the year before his death.

The Deputy Commissioner: During that entire period to June, 1938.

The Witness: Three families.

By Mr. McCabe:

Q. Three families? A. Three families when they are rented.

Q. Take one apartment, one, two, three, take one apartment and tell me what you received in rental for that. A. Well, I have one family that pays seven and a half.

Q. Seven and a half a week? A. Yes.

90 Q. That is roughly \$36 a month; now, your next apartment, how much do you get for it? A. I have one downstairs I am supposed to get \$8 for, but I don't get it.

Q. That is roughly about \$37? A. Yes.

Q. What do you get in rent for the other? A. I am supposed to get seven, but I don't get that, either, he owes me \$40, and the one downstairs—

Q. (Interposing) You are talking about now; we are not talking about now. A. That was last year; it has been standing out and I can't get it.

Q. I just want to know the price of them, whether you get it or not doesn't matter, because it is what it earns that we are interested in—what your income is supposed to be. A. But you can't live on it when you don't get it.

Q. You have one at seven and a half, one at eight dollars a week, and the other apartment you are supposed to get how much for downstairs? A. Seven.

Q. That is roughly \$28 a month? A. You have the list there.

Q. Now, have you any other source of income? A. No, sir.

Q. What rent do you pay for the house? A. I
91 don't rent it.

By the Deputy Commissioner:

Q. Do you own it? A. Yes.

By Mr. McCabe:

Q. Is it mortgaged? A. It isn't mortgaged, but I have a demented brother who has a half interest in it.

Q. I see. Where is he confined? A. He is up in Maryland in a private place where I keep him.

Q. Does any of the income of that place go to him? A. Part of it.

Q. Who pays it? A. I pay it myself.

Q. Does he have a committee appointed to look after him? A. No, there is an arrangement made.

Q. Through the court? A. Not exactly.

Q. Then, you don't pay any rent for that house at all? A. No, sir, I don't pay rent.

Q. How much money do you send to this demented brother of yours? A. I don't keep track, although I go up to see him and take him things, and the carfare, also.

92 Q. Coming back to the time of your husband's death, can you give the Commissioner an idea of how many times you visited him at the place on Eye Street? A. At what time?

Q. The year before his death. A. I didn't do very much visiting then; that is the statement I wanted to make, and I would like to get the advice of the Commissioner before I make it.

Q. Sometimes you met him downtown and sometimes at the house? A. There is something that comes in there.

The Deputy Commissioner: Well, what is it?

The Witness: I don't want to say anything that hurts me.

Mr. McCabe: We want to know the truth whether it hurts or not.

The Witness: Well, it doesn't affect this case, but I won't make it unless the Commissioner tells me to.

Mr. Sheehan: I don't know any reason.

The Witness: Well, it is a very ticklish matter and I want to discuss it with you, Mr. Sheehan.

(Thereupon there was a conference had between Mr. Sheehan and the Claimant.)

The Witness: He told me not to come over there on account of the class of people that lived up there.

By Mr. McCabe:

93 Q. He told you not to come on account of the class of people there? A. Yes.

Mr. McCabe: That isn't slander; that is what somebody told you.

By the Deputy Commissioner:

Q. During that year prior to his death how many times did you visit the place where he lived? A. He told me not to.

By Mr. McCabe:

Q. No, how many times did you visit your husband at the place where he lived? A. I just told you that he told me not to come there.

By Mr. Sheehan:

Q. Mrs. Weeks, won't you answer the question? If you went there once, say one time. A. Once I met him downtown because he told me not to come there.

By the Deputy Commissioner:

Q. You didn't go there; is that the answer? A. Yes.

By Mr. McCabe:

Q. You didn't go. Now, the year preceding, the year before his death, how many times did you visit him at his place? A. I don't know exactly but I was there several times.

94 Q. Did you ever spend the night with him at the place on— A. (Interposing) Not there, no, sir, but he was at my place several times.

Q. When, the year preceding his death? A. But I used to—

The Deputy Commissioner (interposing): Listen to the question, please.

By Mr. McCabe:

Q. Was it one or two occasions preceding his death? How many times do you estimate Mr. Weeks spent the night with you at your address on 511 A Street? A. I couldn't make any statement as to how many times.

Q. About how many times do you think? A. I will tell you, as a rule he would stay around until 11 or 12 o'clock, but on account of catching jobs he would have to be there at 7 o'clock, and he would go back and be there at 7 o'clock in the morning.

Q. You say he would have to go back for the purpose of getting a job? A. Yes, at 7 o'clock.

Q. Wouldn't it have been possible for him to live at 511 A Street and catch a job like other men have done?

Mr. Sheehan: I think that is argumentative.

The Deputy Commissioner: I will permit the answer.

The Witness: Doing the class of work he did, he
95 wasn't known down there and they wouldn't go down there to give him a job and, as I understand, he got a good many jobs through his young son who was known from one end of Ninth Street to the other.

Q. Do you know how long after your husband had been injured and had left the Greenbelt job, that is getting back to 1936 and running through to the time of his death in 1938, do you know whether or not your husband was on relief for the District of Columbia? A. No, sir, I was under the impression it was considered compensation for being injured. I didn't know anything about it.

Q. Did you ever see any of the checks he received? A. The first ones I did; the last ones I did not.

Q. Didn't you know as a matter of fact, that there was a time when the compensation checks didn't come to him? A. No.

Q. Was it your impression that he received compensation from the United States Employees' Compensation Commission from the year 1936 up to the time he died? A. I understood it was for being injured, yes, sir.

Q. Do you know, as a matter of fact, whether his two sons contributed toward his support? A. No, sir, I don't know anything about it.

Q. His two sons, their names, for the purpose of
96 the record, were Irving Weeks and Maurice O. Weeks? A. Yes, sir.

Q. Do you know whether or not for one year preceding his death they contributed toward his support? A. I don't know anything about that; they were both married.

Q. Do you know whether they helped their father or not? A. I don't know that.

Q. Do you know whether or not he went down to live with either of his sons at any time? A. Yes, he went down to the one that was married one time.

Q. And when was that, do you know? A. I don't remember exactly.

Mr. McCabe: That is all.

Redirect Examination

By Mr. Sheehan:

Q. Now, Mrs. Weeks, with reference to this statement dated June 23, 1938, how long after your husband died was this statement to this man made? A. The next day.

Q. The next day? A. He died on Thursday, Friday—the next day.

Q. Did you have your glasses when this was talked over?

A. Yes, sir.

97 Q. I see something is rubbed out here. A. Maybe I can tell what that was supposed to be, because I remember somewhat what the questions were.

Q. What did this gentlemen represent to you in securing this statement? Did he make any representations to you about whether it was for your good, or otherwise, that you sign this statement? A. Well, I was under the impression that it was; I don't remember what he said, but I was under the impression that it was, yes, sir.

Q. Now, on this—you corrected this statement, I believe, to say that he never fully supported you? A. Yes, that should have been fully and it wasn't. Of course, I didn't notice it at the time.

Q. Now, at this house on A Street, Mrs. Weeks, and we are talking about the year preceding your husband's death, I believe there were five rooms which you rented out? A. Yes.

Q. Which were available for renting out? A. Yes, sir.

Q. Now, how were those arranged, in groups of two? A. Yes.

Q. Suppose you give me the layout of the house; in the basement is there an apartment? A. No.

98 Q. On the first floor is there an apartment? A.

Let me make a statement: I moved there after he got this work with the intention of living practically out of his salary and, of course, we intended to use the whole first floor, which we really needed, and at that time I intended to let my brother have the upstairs and let him do as he pleased upstairs; I would get my rent and my husband would work, which he was doing at the time.

Q. That is your demented brother? A. Yes, and as I say, that is when my husband was working then and getting what we termed enough to live on, by me having this downstairs apartment. Well, as I say, he got hurt so shortly afterward after he had got permanent work with this outfit, he got this permanent work, it was supposed to be permanent, that was our arrangement, but then he got hurt so quickly after that that it knocked everything in the head and I had to rent my entire place.

Q. On the first floor what did you rent out? A. Two small rooms and a bath.

Q. Two small rooms and a bath? A. Yes.

Q. Rented those together? A. Yes, took my kitchen away; I have no kitchen.

Q. On the second floor what did you rent out, three
99 rooms together? A. No.

Q. How many rooms on the second floor? A. There is really four, but one of them is about as big as this table, I guess you would call it a room.

Q. And did you rent them out individually or together? A. No, together.

Q. All four together? A. No.

Q. Two together? A. Yes.

Q. So you had what we might call three housekeeping apartments? A. Yes, sir.

Q. Now, in the year next preceding his death were all of those apartments rented all of the time? A. No, sir.

Q. Could you give an estimate of the vacancies? A. Well—

Q. (Interposing) May I ask this question? On an average as many as two of them were rented all the time?

A. Well, on an average.

Q. On an average two of them were rented all the time, paid the rent all the time? A. Yes.

Q. Would it be any more or any less than that?
100 A. Well, I would say two of them was rented.

Q. On an average? A. On an average.

Q. I believe you stated to Mr. McCabe you got from \$6 to \$8 when you collected rent? A. Yes.

Q. Now, did you always collect the rent? A. No, sir, I had one man who owed me a little over \$40, another lady \$43.

Q. Did they owe you that for that year? A. Yes, and they still owe it.

Q. Now, your income from the house yearly was how much? A. I haven't that; you have notes there, a statement. Let me see that. Just a minute, lend me a pencil.

Mr. McCabe: I will object to her testifying from this record unless she made this record at the time she kept books and had that as a record, not something that was made up since then.

The Witness: That is something I have already referred to, but that point isn't necessary (indicating). I will just take that off, that don't belong to this at all.

By Mr. Sheehan:

Q. Mrs. Weeks, what is the paper you have in your hand there? A. It was made in reference to some work
101 that was to be done, but it hasn't been done yet, but that work on there (indicating) has been done.

Q. During the year? A. Yes, sir, last year.

Q. Without referring to any memorandum on that record do you know what you paid out for repairs in the year next preceding your husband's death? A. Since I have no receipt I couldn't tell you exactly.

Q. Could you give an estimate of how much you paid out?

A. Well, I had the roof fixed, the bathroom painted, and had the roof painted—

Q. (Interposing) Well, over and above your income what money did you have left over after you took care of the expenditures with regard to keeping the house in repair, and the other necessary expenses to renting out these apartments? A. Nothing, and it isn't all done, either.

Mr. Sheehan: That is all.

Re-Cross-Examination

By Mr. McCabe:

Q. I just want to ask you one question, Mrs. Weeks: Did you go to the Aetna Insurance office after your husband died? A. My stepsons took me up there, yes, sir.

Q. When did you first visit the office of the Aetna Insurance Company, do you recollect? A. The day after he died.

102 Q. The date of this statement? A. Yes.

Q. So you went up to the Aetna Insurance Company office and there gave this statement; is that right? A. My stepson took me there, yes, sir.

By Mr. Sheehan:

Q. Before that had some one called at your home? A. No, sir, it was after that he called, it was after.

Mr. McCabe: That is all.

By the Deputy Commissioner:

Q. Mrs. Weeks, I want to ask you some questions, don't volunteer anything; if you can answer yes or no, do so.

When did you see your husband last before his death?

A. I think it was about two weeks.

Q. And what were the circumstances of your visit? Where were you? Where did you meet him? A. We were downtown together, just talking, that is all.

Q. You mean you met him on the street? A. Yes, I met him at the car line.

Q. Was it an accidental meeting? A. No, that was the arrangement after he told me not to come to the house.

Q. How often did you see him that way? A. He would send me a card when he wasn't working, and I met
103 him downtown two or three times a week when he wasn't working, I would meet him when I would come down town.

Q. When did you last see him at your home? A. I think that was the week before, he was at the house, and I saw him once downtown after that before he was hurt.

Q. How much time did he spend at your house when he was there the last time? A. He was there twice, but he didn't stay the same time.

Q. I am talking about the last time he was there, how long did he stay there then? A. I don't remember exactly, he was there that evening, far into the afternoon and that evening, but I can't give you the date.

Q. Did you discuss any money matters? A. Well, we always did that, yes, sir.

Q. What did you discuss on that date, if you remember? A. Well, about his work mostly.

Q. Was he working? A. No, sir, not regularly.

Q. On that day was he working at that time or about that time? A. No, sir, not that day, not that day; I used to meet him at lunch time sometimes when he was working.

Q. When he left your home about two years prior to his death, I understand it was an agreement between
104 both of you? A. Yes, sir.

Q. He didn't just pick up and leave, did he? A. No, sir.

Q. You wouldn't say then, that he deserted you, would you? A. Oh, absolutely not; we had a few arguments, but that is all, and they didn't amount to anything, and that was over finances, and our getting by, each one getting by; we had to live, you know.

Q. Did he make any demands upon you for money? A. No, sir.

Q. Did you make demands upon him for money? A. No, sir, it was an agreeable arrangement; no, sir, I didn't make any demands.

Q. What was the agreeable arrangement? A. Sir?

Q. What was an agreeable arrangement, what do you mean by that? A. Well, I had reason to feel he did the best he could for me under his unfortunate circumstances.

Q. In so far as giving you money is concerned? A. Yes, because he was very unfortunate in getting hurt at that time.

Q. Did you ever loan him money? A. No, sir.

105 Q. Were any of the payments that he made to you payments of money for anything but support? A. No, certainly not. What else would there be?

Q. I am asking you, now, Mrs. Weeks. I want you to tell me. I don't know the circumstances. A. Well, he was living—as I say, was the only thing that counted between us was that we each had to live, and it was pretty hard, and I wanted to be fair, I wanted him to have something to eat as well as myself.

Q. When was the last time that he gave you any money before his death? A. The last time that he was up there.

Q. That was a week before his death? A. No, it was about two weeks that he gave me the money.

Q. How much did he give you on that occasion? A. It wasn't very much at that time.

Q. Well, how much was it? A. Oh, a couple of dollars.

Q. Two or three? A. Yes.

Q. And when was the time prior to that that he gave you any money? A. Well, he hadn't had so very much work in the last few weeks.

Q. Now, try to answer the question. A. He gave
106 me as much as \$5—

Q. (Interposing) When was the time before the time he gave you the \$2? A. I don't know the date that I say it was \$5.

Q. How many days or how many weeks or how many months? A. Oh, it was around in the last month.

Q. Was it about a month before he gave you the \$2? A. No, he gave me five before that.

Q. When he gave you the \$5 how long was it before he gave you the \$2? A. Well, around two weeks, I should say.

Q. Two weeks? A. Yes, because, as I say, I never made any demands, but when he knew he was to get it we always made arrangements to meet and went out; I could have gotten more from him, too, I guess, but I wanted him to live, too.

It seems to me as though, Mr. Cardillo, I am being persecuted for not going on relief as he did, and I worked when I wasn't able to keep going, and I am being treated very unfairly for it, and I would like to understand why, that is one thing I would like to get some answer from somebody on. I have worked all of my life since I was six years old, and I prefer to work if I am able to but, of course, I am not able to now.

The Deputy Commissioner: That is all, Mrs. Weeks.

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107

Maurice Olin Weeks

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Direct Examination

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108 Q. Did you help him to get work? A. Yes, I used to help him get little odd jobs.

Q. During the last two years of his life how many jobs did you help him to get? A. Oh, I guess two or three.

109 Q. Two or three jobs? A. Yes.

Q. What type of jobs would they be? A. Oh, just little brickwork, patchwork, something like that.

Q. Was he on relief at that time? A. Yes.

Q. Did he let the relief people know he was getting these jobs? A. That is something I don't know.

Q. Do you know whether or not he gave Mrs. Weeks money? A. No.

Q. You were never present when any money passed? A. No.

Q. You don't know whether he did or didn't during the last year he was alive? A. No.

* * * * *

110 Cross-Examination

By Mr. McCabe:

Q. Your name is Irving Weeks? A. Maurice Olin.

Q. Maurice Olin Weeks? A. That's right.

Q. Do you remember talking with Mr. Vincent of the Aetna Insurance Company? A. I remember talking to somebody. I think it was Mr. Vincent's secretary; I went to see Mr. Vincent and they said he was out.

Q. You went up to see Mr. Vincent? A. At Fifteenth and K.

Q. Shortly after your father was injured? A. Yes, sir.

Q. Do you remember signing a statement up there? A. That I signed a statement?

Q. Yes. A. I don't remember whether I did or not.

Q. Is that your signature? A. That is my name.

The Deputy Commissioner: What did you say?

Mr. McCabe: That is his name, he said.

111 By Mr. McCabe:

Q. Is that your signature? A. That is my signature.

Q. Will you read this statement? A. Do you want me to read it out loud?

The Deputy Commissioner: Just read it to yourself.

Mr. Sheehan: May I see it when you have finished?

Mr. McCabe: Yes.

Mr. Sheehan: Before you proceed with your examination may I finish reading this? I want to ask him one more thing.

Mr. McCabe: I will object to your questioning him. If you want to discuss it, you may send him out of the room.

Mr. Sheehan: No, I just want to ask him one thing, I will tell you what I want to ask him and if you object to it, you may.

(Thereupon a conference was had between Mr. Sheehan and Mr. McCabe, after which the following occurred:)

By Mr. Sheehan:

Q. Did you ever see me in your life and to your knowledge before this morning when I walked into this hall out here? A. I have been trying to place you, but I couldn't say whether I have or not.

Q. You never have talked to me? A. No, not unless I met you at some veterans' meeting; I don't recall otherwise.

112 Q. I don't recall it; the information you gave me in the hall was the same as you have given here? A. Yes.

By Mr. McCabe:

Q. Now, you talked with the representative of the Aetna Insurance Company up there in their office? A. That is right.

Q. And after questioning you he prepared this statement, didn't he? A. Yes, he was writing this while he was talking.

Q. And after you got through he prepared this statement and you and your brother signed it? A. Yes, but we didn't read it; he wrote it, too.

Q. Do you generally put your name to statements without reading them? A. What we wanted then more than anything else was a decent burial, and we didn't have any, and they said it would be about \$200, and that is what really we were interested in more than anything else.

Q. But he questioned you relative to the things in this statement? A. Yes, and he was writing, and I couldn't see what he was writing, I was sitting on the other side of the table like the lawyer over there, and I couldn't see what he was writing.

Q. The statements in here are correct, are they?
 113 A. Yes.

Mr. McCabe: That is all. I will offer this in evidence.

Redirect Examination

By Mr. Sheehan:

Q. Mr. Weeks, is it correct that she married him in 1936?
 A. I don't think so.

Q. Well, that is one thing that is not correct in here. A.
 I don't think so.

Q. He wasn't married in about 1936? A. I don't think
 so, that isn't right.

Q. But he only lived with his wife about three months;
 is that right? A. I think it was longer than that because
 he did a little work when he was at H Street, brick work.

* * * * *

118 Re-Cross-Examination

By Mr. McCabe:

Q. Wait a minute, Mr. Weeks, when you went there they
 told you they would take care of the funeral expenses up
 to \$200? A. Yes.

119 Q. Do you remember making the statement that
 he was dependent upon you for support? A. No.

Q. You didn't ever make such a statement? A. No.

Q. Is your brother here this morning? A. No.

Q. Did you go out and try to find him this morning? A.
 I did.

Q. He lives right near here, doesn't he? A. He is sup-
 posed to. I couldn't find him. I haven't seen him since a
 little before Christmas.

Q. When you went to see the Aetna Insurance Company
 did you expect, you and your brother, to get any money?
 A. Only for funeral expenses. I went up there one time
 and he said he had to pay the Government \$1,000, he would

just as soon give it to us, but he had to pay it to the Government for some reason.

Q. You were at the Aetna Insurance Company twice weren't you? A. Yes.

* * * * *

122 **Florence M. Huff** was called as a witness for and in behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

123 Direct Examination

By Mr. McCabe:

Q. What is your name? A. Florence M. Huff.

Q. Where are you employed at the present time? A. Public Assistance Division of the Board of Public Welfare.

Q. For the District of Columbia? A. That is right.

Q. Do you have any records from this Public Assistance Division relating to the case of Maurice G. Weeks? A. Yes.

Q. Will you advise the Commissioner as to when your Public Assistance Division first gave relief to Mr. Weeks?

A. The first relief was on August 12, 1932. Our system of bookkeeping was changed; it is practically impossible to go back prior to November, 1932.

Q. November, 1932, will be satisfactory; I mean starting with November, 1932, did he apply for relief during that year? A. Yes, but you see, our financial records are kept separately and the system was changed, and I can only give you from November, 1932.

Q. I think, to save time, suppose we start in around the year 1934; have you got that? A. Yes, we gave relief in September, October, November, and December, 1934.

124 Q. Now, did you have an address in 1934 on Mr. Weeks? A. 507 H Street, Northwest.

Q. 507 H Street, Northwest; did he file an application? A. Yes.

Q. Did he state whether he was married or single? A. Married.

The Deputy Commissioner: Wait a minute. What application are you referring to?

Mr. McCabe: Maurice G. Weeks, 1934.

The Witness: This one was August, 1934; there were several applications.

Mr. Sheehan: That would be a good place to start, in August, 1934, because these people were married in August, 1934; August 20, 1934, he applied for relief?

The Witness: Yes.

By Mr. McCabe:

Q. Was it Maurice G. Weeks? A. We have it just Maurice.

Q. Maurice Weeks applied for relief and gave his address at 507 H Street? A. Yes.

By the Deputy Commissioner:

Q. And stated he was married? A. Yes.

125 The Deputy Commissioner: Please don't nod your head, just say yes or no for the record.

By Mr. McCabe:

Q. How much did you pay him at that time and for how long a period? A. We only gave relief to him as a single man at the time because he wasn't supposed to be living with his wife at that time. September 5 he received \$7—wait a minute, \$11.40 and \$9.60 work relief.

Mr. Sheehan: May I get that straight, September 5 you gave him \$7?

The Witness: Yes, and then \$4.40 and work relief \$9.60.

Mr. Sheehan: When was that, the same day?

The Witness: Yes.

Mr. Sheehan: \$4.40, and work relief \$9.60?

The Witness: Yes.

Mr. Sheehan: Was that for a week or two weeks or what?

The Witness: I couldn't tell you without having all the ledger books.

Mr. Sheehan: At any rate on September 5 he got \$21 for something?

The Witness: Yes.

By Mr. McCabe:

Q. That was \$4.40 and \$9.60 work relief, and how
126 much else? A. There was \$7 and then \$4.40.

The Deputy Commissioner: Mr. McCabe, wouldn't it be sufficient for the period of 1934 simply to get the weekly or monthly relief benefits?

Mr. McCabe: Suppose we put it this way: Beginning with August, 1934, how much relief did you pay Mr. Weeks during the balance of the year? I think that will bring it out, Mr. Commissioner, up to the end of that year, 1934; we can take it by years.

The Deputy Commissioner: That would be the total.

The Witness: Yes, I have it totaled.

By the Deputy Commissioner:

Q. How was he paid, by the month?

Mr. Sheehan: Couldn't that exhibit be left with us?

Mr. McCabe: I think she will have to work it out.

The Witness: It would be \$765.20 from 1934 on through to the time of his death.

By the Deputy Commissioner:

Q. Beginning in August, 1934, up to the time of his death? A. Yes.

By Mr. Sheehan:

Q. Now, was he continuously on relief or was he on and off? A. The only time he was off, some time in 1935,
127 that is when the case was closed; wait a minute, July 1, 1935, was the last period of relief and then he didn't get any until October 20, 1935. In January there was none issued.

Q. Then there was none issued except in August, September and October, 1935? A. The rest of the months it goes straight through.

By Mr. McCabe:

Q. So that outside of those two periods you have just given he was on continuous relief from August, 1935? A. Yes, sir.

By the Deputy Commissioner:

Q. Wait a minute, what was the average monthly relief payment, or did it vary? A. They varied; it looks like around about 10 is the outstanding figure.

Q. About \$10.50?

Mr. Sheehan: That \$10.50 is semi-monthly, isn't it?

The Witness: Yes.

Mr. Sheehan: \$21 a month.

The Witness: A month.

By Mr. McCabe:

Q. Now, when you first investigated this case you investigated at 507 H Street, Northwest, in 1934? A. I think it was 1934.

Q. You stated you gave him relief as a single man; 128 what did your investigation show at that time? A.

Well, it says here in the record "Mr. W." We use the initial "hasn't seen or heard from his wife in about seven months; her name was Margaret Smith Weeks."

However, I notice on this 1934 application blank it is given as Annie Rose, another place Herbert.

Q. Now, did there come a time when he left 507 H Street, Northwest, according to your records? A. Yes, sir; 415 Massachusetts Avenue, November, 1934.

Q. 415 Massachusetts Avenue? A. Yes, sir.

Q. 1934, and you paid him relief at that address? A. Well, the relief was issued regularly, I don't see just which address is the one the checks went to.

Q. Then your next change of address on him at this 415 Massachusetts Avenue in 1934, what is your next change of address on him? A. Well, it says March 26, 1935, the record says that the landlord stated that Mr. Weeks had moved the week before and hadn't left any address.

Q. Now, what is your next address, here, Massachusetts Avenue, on March 26, 1935, when you found he had left and didn't know his address, what is the next address? A. The next dictation pertaining to that says that the worker visited 507 H Street, Northwest; the last one I gave you
129 is what, 405 Massachusetts?

Q. Yes. A. 8-20-35, and that was the last address he gave the Works Assignment Division; then the worker went there and talked with the landlady.

Q. Is that at 507 H Street, Northwest? A. Yes, the landlady claimed he visited there quite often, and was upset that no relief had been sent him.

Q. What was the last sentence? A. That he visited there quite often and was upset that no relief had been sent him.

Q. After that what was the next address you have on him? A. We notified him that unless he came in and got us straightened out about his address the case would be closed, and we didn't hear from him and it was closed.

Q. Closed on that date? A. 9-11-35; you see, that is in the period when there was no relief issued. Then the case was reopened October 16, 1935.

Q. At what address? A. I can't read that writing; it looks like 454 K Street, Northwest.

Mr. Sheehan: I am not sure, but it looks like 454 K Street, Northwest. Well, you can only tell what the record shows. That is not your original record, is it?

130 The Witness: Beg pardon?

Mr. Sheehan: I say, that is not your original record, is it?

The Witness: No.

Mr. Sheehan: Somebody else made it.

By Mr. McCabe:

Q. Now, did you send him relief at that address? A. He received relief on October 22, 1935.

Q. Now, then, how long did he stay at that address receiving relief? A. Well, then, when we visited he had moved to 415 Massachusetts Avenue.

Q. And what date did you find him at that address? A. It is dictated on 10-30-35; sometimes it will follow on a little later, vary a little.

Mr. Sheehan: What address is that?

The Witness: 405 Massachusetts Avenue, Northwest.

By Mr. McCabe:

Q. And how long did he stay there, according to your records? A. October 16, 1936, and the next I see mentioned is 810 Eye Street, Northwest.

Q. That is the first time you pick up 810 Eye Street in your records? A. Yes, the first time I see it; no, 131 wait a minute, it says on 12-17-35, it says "Mr. W. was at the District office regarding his check which, through a typographical error, was sent to 510 instead of 810 Eye Street, Northwest."

Q. Now, then, did you continue sending him relief checks at 810 Eye Street, Northwest, from that time up to the time that he died? A. This looks to me as though he was on there; I don't see any other address.

Q. So, so far as you know, then, that was the last address you had on him up to the time that he died? A. Yes, sir.

Q. Now, beginning with 1936 and running through until the time that he died in 1938 did you have anything to show as to whether he was living separate and apart from his wife, statements made by him? A. We sent out a form in June, 1938, which all the recipients of relief had to sign, and he said, "I have nobody but myself, and I am not able to work."

Q. And when was that signed, June, 1938? A. We mailed the letter out on June 2, 1938.

Mr. Sheehan: June 2?

The Witness: Yes.

Mr. Sheehan: Is that the first? Well, excuse me, go ahead, Mr. McCabe.

By Mr. McCabe:

132 Q. Do you have any record showing the date of his death according to your own record? A. We have the hospital report and the Health Department; is that what you mean?

I notice on June 25, 1938, we got reports from that.

Q. In other words, if recipients for relief were injured you receive notice of it, do you? A. We get all the death reports or items when they are injured, and then we clear those through our files on the people who have died and stop their checks.

Q. To stop the checks? A. Yes, and he died in the emergency; we get that from the Health Department, where he died and when he came in.

Q. And you stopped the issuance of checks? A. The last check was issued June 16; the one on July 1 was canceled for some reason.

The Deputy Commissioner: 1938?

The Witness: Yes.

Mr. McCabe: That is all.

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135 Lucy Barry

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Direct Examination

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137 Q. When was the last time you saw her visit him where he lived? A. She visited at 812 then, I couldn't say whether it was in the winter or not, but I saw her coming out the door one day there and Mr. Weeks told me his wife had been to see him.

Q. Can you say the year? A. It was the last year of his life.

Q. You know he died in 1938, don't you? A. Yes, it was in cold weather that Mrs. Weeks came.

Q. The winter before? A. Yes.

Q. That was the only time you had seen her in the past year? A. Yes, sir.

Q. Now, coming back to the one and a half years prior to his death, how many times in your estimation has she visited him at your place? A. Well, I couldn't really say; I saw Mrs. Weeks a couple of times, but she could have been there more because I don't see everybody that comes in.

Q. But you had seen her a couple of times during 138 that period? A. At the beginning when he came back.

Q. Did she ever stay there over night? A. Not that I know of.

Q. Do you know where his source of income was derived? A. He was on relief.

Q. He was on relief, I see. Did checks come regularly there for him?

The Deputy Commissioner: Don't nod your head.

The Witness: I am sorry, I have never been in court.

By Mr. McCabe:

Q. Just state; what did you say the answer was? A. Yes.

Q. And did he work anywhere to amount to anything the year before his death? A. No, he did little jobs occasionally, brick work.

Q. Brick work? A. Yes, sir.

Q. Did he pay his rent regularly? A. Yes, what I charged him.

Q. What did you charge him? A. \$3 he was supposed to pay, but he helped do little things around the house.

By the Deputy Commissioner:

139 Q. \$3 a week? A. Yes, but I didn't always charge him.

By Mr. McCabe:

Q. What did he do to help? A. Oh, he helped wash and fix things.

Q. Did you know about his sons? A. Yes.

Q. Did they help him any? A. I think one wasn't able to help him any, but maybe they did. I don't know.

Mr. McCabe: That is all.

Cross-Examination

By Mr. Sheehan:

Q. I believe you were talking with me last night, weren't you? A. Yes, I think it was you.

Q. Well, take a good look, now, and be sure; I believe you said that Mr. Weeks came back to live with you the second time about 16 months after he was married? A. I wouldn't know whether it was 16 or not.

Q. Well, it was more than a year anyhow? A. Yes.

Q. It was about 16 months? A. Yes.

Mr. Sheehan: That is all.

140 Examination in Chief

By the Deputy Commissioner:

Q. Did you have conversation with Mr. Weeks frequently during the time he was living with you? A. Yes, we used to talk as we were working around.

Q. And did he discuss his marriage with his wife, Annie Weeks? A. No, I can't say that he said anything special about it.

Q. Well, do you recall any conversation that might have been had between both of you with reference to why they were living apart? A. Yes, he told me they couldn't agree.

Q. When did this conversation take place? A. I couldn't say exactly, but it was some time while he was working for me.

Q. Is that all he said about that? A. That is all.

Q. Did he at any time discuss with you as to whether or not he was supporting his wife? A. He said he was—

Q. (Interposing) He said he was?

By Mr. McCabe:

Q. Did he discuss it with you? A. No, he never said anything about it.

141 By the Deputy Commissioner:

Q. Have you any knowledge as to the fact that he did contribute to his wife's support? A. No, I have not.

The Deputy Commissioner: That is all."

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EXHIBITS.

Signed Statement of Mrs. Annie Weeks.

152 "Washington, D. C.

June 23, 1938.

Statement of Annie King Weeks of 511 A St., S. E., Wife of Morris G. Weeks.

On the 8th day of August, 1934, Maurice G. Weeks and myself were married in Alexandria, Va. Since the date of this marriage Maurice Weeks and myself have been living as man and wife though not always at the same domicile, however, there has been no separation and I have always considered myself his lawful wife.

Ever since my marriage to Maurice Weeks he has not been able to support me, and as a matter of fact I have been giving Maurice Weeks money ever since our marriage. He was unable to earn enough money to support himself. About 1936 Maurice Weeks was hurt while at work at Tugwell Town and this laid him up for some time.

Ever since we were married I have been running a rooming house at 507 H St. N. W. but in 1936 I was forced to give this up due to sickness. Since 1936 I have been renting apartments at 511 A St. S. E.

(Signed) Mrs. Annie Weeks"

Signed Statement of Irving L. Weeks and Maurice O. Weeks

153 "We, Irving Weeks of 1106 L, N. W. and Maurice O. Weeks of Accokeek, Md. state that we are the only two children of Maurice G. Weeks. Irving being 32 and Maurice 36. Irving not married and Maurice married and three children, Agnes born April 8, 1920, George born July 5, 1925, Doris May born May 21, 1927.

Our father Maurice G. Weeks is married. Our mother is dead, dying in 1905 or 1906. Since that time our father has married three times since the death of our mother. Father married Emma Bailey about 1908 or 1909. He divorced her about 1915. He then married Lillian Herbert and she died May 21, 1933. He married again about in 1936 but only lived with this wife about three months. This wife lives at 511 A S. E. Our father lived at 812 Eye N. W. Wash. D.C.

I, Irving, state that I am sure that my father has not helped or contributed to his last wife since their separation about two years ago. Father has not worked regularly for years probably since 1925. He would work and earn just a little and I have contributed to his support for a great many years. He would visit at Maurice's home for a week or two at a time and this was Maurice's contribution to father's support. Father did not support or contribute to the support of anyone, as a matter of fact we two boys were contributing to his support.

(Signed) IRVING L. WEEKS

(signed) MAURICE O. WEEKS